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Washington Focus: The Center for Public Integrity reported Nov. 9 that Frank Klotz, administrator of the Energy Department's National Nuclear Security Administration, has proposed ending public access to safety reports because recent media stories were counter-productive to the agency's mission. According to the Center, a proposal was drafted to replace the board's weekly and monthly written accounts of safety shortcomings at sites inspected by the board with oral accounts by staff members to their superiors in Washington, which would not be subject to public disclosure. According to the Center, the proposal was withdrawn Oct. 19. Bob Alvarez, a former senior policy advisor at the Energy Department, told the Center that "this is regressive behavior, rolling back to the old days of the Cold War. The logic behind this is that what the public doesn't know can't hurt us, and there's nothing gained by the public knowing what we're doing."

Court Sides with Agency on Interpretation of Request

A recent ruling by Judge Rudolph Contreras dealing with Richard Wallick's request to the Agricultural Marketing Service provides an interesting discussion of the relative obligations of the agency and the requester to sufficiently clarify a request so that both parties agree on the substance of the request. Because in this instance the parties did not agree, the case is also an illustration of the consequences a requester may suffer for his failure to be clear.

Wallick's attorney, David Stotter, requested records about the application for certification submitted by the Organic Materials Review Commission. Two weeks later, Stotter submitted a revised request, although the agency never admitted to receiving the correction and instead contacted Stotter confirming the request of his original request. Five weeks later, Stotter emailed the agency to check on the status of the request. The next day he spoke on the phone with AMS FOIA Officer Gregory Bridges. As a result of that conversation, Bridges emailed Stotter indicating that Wallick's request had been modified to encompass the complete OMRI application and AMS communications relating to the application and certification. Stotter responded three hours later, disagreeing

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that he had modified the request and clarifying that one item in the original request should be interpreted to include "any records pertaining to any follow-up actions by USDA as to the OMRI application to produce technical reports for NOSB's ISO 65 program." Bridges responded the next day, agreeing with Stotter that Wallick's request had not been modified and indicating that the first item in the request encompassed the full application and supporting documents so that OMRI could produce technical reports for NOSB's ISO 65 program, any communications relating to the processing of that application, and any communications related to OMRI's ISO 65 certification.

The agency initially disclosed 88 pages in May 2016 and told Wallick it would complete processing the request by June 2016. However, the agency did not complete the request until December 2016, withholding some records under Exemption 5 (privileges) and Exemption 6 (invasion of privacy). Wallick challenged the adequacy of the agency's search primarily by arguing that the agency had improperly narrowed the scope of the request by limiting it to OMRI's application for certification and failing to provide records about its recertification. He also challenged the redaction of a single sentence under Exemption 5. Wallick argued that the inclusion of the term "follow-up actions," which appeared in Stotter's clarification emails, but not the original request, included records pertaining to recertification. Contreras disagreed, noting that "Mr. Wallick's FOIA request only included a request for OMRI's original application and not subsequent applications for recertification and documents related to those applications."

Wallick argued that "the plain language of the parties' statement of what they understood the request to encompass clearly covers certification – meaning the state of being certified – since it covers any communication within the agency's possession 'relating to OMRI's ISO certification." Contreras pointed out that "plaintiff is correct that the word 'certification' could mean the state of being certified. However, it could also easily mean the process of being certified. Because the language in the parties' agreement is ambiguous, the Court cannot rely on the plain language of the agreement alone, and instead must look at the context in which the language is used." He noted that "the phrasing 'related to OMRI's ISO certification' did not originate from his FOIA request, but rather his and Mr. Bridges' joint interpretation of his FOIA request, which Mr. Wallick's attorney insisted was not a modification of the original FOIA request. The original request only requested documents relating to 'the complete application' OMRI submitted. At no point does it reference any subsequent applications or give any indication as to what other processes Mr. Wallick was interested in. Read in this context, the Court cannot conclude that the plain meaning of the agreement indicates that Mr. Wallick requested every document in AMS's possession related to the actions OMRI took to maintain its ISO certification."

Wallick contended that his request was not specifically limited to the original application. Contreras indicated that "agencies must interpret FOIA requests liberally and reasonably, but they need not extend the meaning of the request to include things not asked for." He explained that "when Mr. Wallick asked for information regarding 'the application' and then insisted that his original FOIA request had not been modified through communications between Mr. Stotter and Mr. Bridges, AMS was not making a distinction between applications for certification and applications for recertification – Mr. Wallick was. The agency was simply reasonably interpreting his FOIA request, which asked for materials related to a single application."

Contreras agreed with Wallick that the fact that the agency provided records containing audit and recertification materials and characterized them as responsive "does raise the question of how the agency originally interpreted the FOIA request. The agency now claims that it provided these documents out of generosity rather than any obligation under FOIA. If the agency believed this throughout the course of this litigation, it remains unclear why it did not specify this position in its releases to Mr. Wallick or in its motion for summary judgment." He observed that "however, the agency's seeming change in its interpretation of the FOIA request is of little consequence when determining the scope of this FOIA request, as it is this Court's

duty to review the record *de novo* and therefore to interpret the scope of the FOIA request *de novo*. . .[T[he plain meaning of the FOIA request clearly indicates an interest in only a single application and the follow-up actions pertaining to that application. The clarification emails were specifically stated to not be modifications of the request, and therefore cannot be read to broaden the scope of the request."

Having agreed with the agency's interpretation of Wallick's request, Contreras went on to find that the agency's search was deficient in several aspects. He pointed out that "here, the agency has not sufficiently demonstrated that there are no other locations or record systems that are also likely to hold the types of documents requested." Although the agency searched two network drives for emails, Contreras faulted the Bridges' affidavit, observing that "he conclusorily asserts that these were the only places likely to have responsive records, but he never explains why this is so. He never explains how OMRI's application would have made it onto either email system: for example, he never states that OMRI submitted its application by email rather than in paper form, or that it is common practice for AMS employees to email these kinds of applications to each other, thereby uploading them to the agency's email server. As such, AMS's statement that the two networks searched were the only places likely to have all responsive records is merely conclusory." He also found the agency's search insufficient because it had failed to search for other documents that should have been attached to OMRI's application.

Contreras found that a sentence the agency had redacted from an email was not protected by the deliberative process privilege. He pointed out that "the redacted sentence is simply an off-hand comment from a supervisor to a subordinate employee about the potential effect of OMRI's decision to exclude the subordinate employee from an upcoming audit. It is not part of any identifiable deliberative process, nor does it appear to constitute a recommendation as to how the agency should proceed." Alternatively, the agency argued that the since the email was considered non-responsive, it could be withheld on that basis. But Contreras explained that "once an agency has deemed a document to be responsive and has produced it to the requester, regardless of whether it actually is or not, the agency may not redact the information without sufficiently justifying such redaction pursuant to one of FOIA's statutory exemptions." (*Richard Wallick v. Agricultural Marketing Service*, Civil Action No. 16-2063 (RC), U.S. District Court for the District of Columbia, Nov. 20)

Views from the States…

The following is a summary of recent developments in state open government litigation and information policy.

Mississippi

The supreme court has ruled that the Department of Audit, not the Department of Marine Research, is liable for $36,783.50 in attorney's fees for the legal costs incurred by Gulf Publishing Company in litigating to enforce its Mississippi Public Records Act request for records concerning a corruption scandal at DMR. After a joint federal and state task force investigated DMR for misappropriation of funds, which resulted in the conviction of several DMR officials, the *Sun Herald* requested the records from DMR. However, before DMR could comply, the Department of Audit subpoenaed all the records and told DMR that it was not allowed to disclose the records to anyone else. As a result, DMR told the newspaper that the subpoena prohibited it from providing the records. Gulf Publishing Company sued. During the litigation, the Department of Audit provided 22,000 records in electronic form, but refused to provide other DMR records

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that were still in paper form. The trial court ruled in favor of the newspaper, levying attorney's fees against the Department of Audit. At the court of appeals, the appellate court found that the investigative records exemption applied and that, thus, the Department of Audit had acted appropriately. The supreme court modified the trial court's ruling while reversing the appellate court's ruling. The supreme court found no evidence that the remaining paper records were investigative reports protected by the MPRA. But the supreme court reversed the trial court's finding that DMR had violated the MPRA, placing the blame completely on the Department of Audit. The supreme court noted that "even though the Department of Audit was not an original party to these proceedings, the Department of Audit delayed and expanded this litigation with a series of actions that defeated GP's records request, beginning with the issuance of subpoenas demanding that no one else have access to the public records sought by GP. And when the [trial court] ultimately decided that these documents were not exempt under the MPRA, the Department of Audit continued to frustrate GP's records request." (*Mississippi Department of Audit, et al. v. Gulf Publishing Company, Inc.*, No. 2013-CT-00894-SCT, Mississippi Supreme Court, Nov. 16)

New York

The Court of Appeals has ruled that an appellate panel used the wrong standard for determining whether or not a source is confidential when it upheld a presumption of confidentiality for witnesses in an investigation, instead of determining whether the source was given an express grant of confidentiality, or the circumstances were such that an implicit grant of confidentiality could be inferred. The case involved an attempt by Jesse Friedman, who, along with his father, pled guilty to sexually abusing children between the ages of 8 and 12 during after-school computer classes held at their home. His father pled guilty in 1988 and died in prison in 1995. A few months after his father's plea, Jesse also pled guilty. He served 13 years in prison before being paroled in 2001. About a year after his parole, a documentary film entitled "Capturing the Friedmans" cast doubts on the reliability of the investigation's methods of eliciting testimony from the children. Friedman's attempts to have his conviction thrown out were rejected by the federal courts, but led to a review of the case by the Nassau County District Attorney. Friedman requested records from that review and the county denied access to information about the witnesses because it was presumed confidential. The Second Department appellate court agreed. But the Court of Appeals reversed on the issue of confidentiality after finding the Second Department's standard was incorrect. Nassau County argued that the presumption standard should be applied, but the supreme court pointed out that under such a standard, "the only witness statements accessible under FOIL are statements that have already been made public in open court. Nowhere does [the confidential source exemption], however, so much as mention the need for prior public disclosure, whether at trial or any other judicial proceeding, as a disclosure precondition." One justice, agreeing that the appellate court had used the wrong standard, expressed practical concerns about how to ensure the protection of child witnesses in sex abuse cases. (*In the Matter of Jesse Friedman v. Kathleen M. Rice, et. al*, No. 56, New York Court of Appeals, Nov. 21)

Pennsylvania

The supreme court has ruled that a list of state employees required to be published available by Section 614 of the Administrative Code of 1929, and made publicly available under Section 3 of the Right to Know Act, remains public even though Section 3 of the RTKA was repealed in 2002 and replaced by the Right to Know Law, which did not contain a parallel requirement. Pennsylvanians for Union Reform requested the list, arguing that it could not be redacted under the exemptions contained in the RTKL. The State Treasurer, who was responsible for maintaining the list, argued that, since the disclosure mechanism contained in the RTKA no longer existed, the privacy exemptions in the RTKL now applied to the list. The supreme court disagreed. The supreme court pointed out that "if the exceptions to access in [the RTKL] could be applied to public information on the List, the result would be that the public nature of certain information on the List would not

remain public. Instead, the information to be excepted from access would constitute a 'record,' but not a 'public record,' under the RTKL." Although the supreme court emphasized that none of the RTKL's exemptions applied, it explained that its prior recognition of a constitutional right of informational privacy likely meant that some personal information must be subjected to a balancing test to determine if it were exempt or not. The supreme court sent the case back to the trial court for further proceedings on that issue. (*Timothy A. Reese v. Pennsylvanians for Union Reform, et al.*, No. 42 MAP 2016, No. 43 MAP 2016, and No. 111 MAP 2016, Pennsylvania Supreme Court, Nov. 22)

Virginia

A trial court has ruled that the City of Norfolk properly responded to two FOIA requests submitted by Terry Hurst for records provided to the Virginian-Pilot pertaining to the destruction of records of an investigation of Ex-Sheriff Bob McCabe. Although the court found the City responded fully to both requests, it also found that the response for both requests was several days later than the statutory deadline for responding. The City argued that its tardiness in responding to the first request was excused because Hurst had not sufficiently described the records he was seeking. But the court pointed out that "a public body must respond to even vague FOIA requests within five days, and a request for further specificity does not toll the five-day time limit within which the public body must provide one of the five statutorily required responds. . ." As to Hurst's second request, the City told Hurst he would need to provide a $333 deposit to pay for the records. Hurst did not respond. The court noted that the FOIA "goes on to provide that 'the period within which the public body shall respond under this subsection shall be tolled for the amount of time that elapsed between notice of the advance determination and the response of the requester.' Because Hurst never forwarded the deposit, the City was not obligated to forward the records to him." (*Terry R. Hurst v. City of Norfolk*, No. CL17-11119, Circuit Court of the City of Norfolk, Nov. 20)

The Federal Courts…

Judge Beryl Howell has ruled that the public interest in knowing more details about FEMA's Hazard Mitigation Grant Program, which provides funding for the purchase of flood-prone properties, outweighs the privacy interest of individuals whose property was purchased by the program. Robert Benincasa, a producer with NPR's computer-assisted reporting investigations unit, requested records about the program after finding reports by the Department of Homeland Security's Office of the Inspector General had accused the program of mismanagement. FEMA disclosed 66 documents, but withheld names, addresses and GIS coordinates for the properties under **Exemption 6 (invasion of privacy)**. Benincasa appealed that decision, but the agency upheld the redactions on appeal. Howell, however, had little trouble concluding that the public interest in disclosure clearly outweighed the limited privacy interests. The agency attempted to show that disclosure would constitute an invasion of privacy because it would connect the individuals who a particular program, particularly by suggesting they had received a unique government benefit. Howell pointed out that "because production would reveal only a one-time receipt of payment for a single past sale of real property rather than a recurring receipt of benefits, a person could not infer whether the seller has the sale money or is due to receive additional money." The agency argued disclosure could bring participants unwanted media attention. Howell indicated that "because FOIA requests almost always seek previously-unavailable information that sheds light on government activities, the government's disclosure in every case may attract media attention. To allow an agency to invoke Exemption 6 merely because the media might contact an individual in connection with a produced record would bring a vast number of FOIA requests within Exemption 6's auspices, undermining FOIA's purpose of allowing 'citizens to know what their Government is up to.'" Benincasa argued that the

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information was contained in public property records, but Howell noted that hardly meant that it was readily available. She observed that "the information at issue, though public in a literal sense, is not in any meaningful way." Having found a minimal privacy interest, Howell turned to the public interest, pointing out that "disclosure of the records at issue would serve the public interest." She added that "production of the records sought would reveal at least three pieces of information regarding the defendants' management of the HMGP currently unknown to the public – the specific locations of properties purchased, the properties' individual purchase prices, and the identities of HMGP sellers." FEMA argued that under *Dept of State v. Ray*, 502 U.S. 164 (1991), the derivative use of government information to contact individuals was not recognized as a public interest. Howell noted that "*Ray*, however, expressly declined to adopt 'a rigid rule' disregarding public interest in "derivative use" of requested documents,' and the D.C. Circuit 'takes derivative uses into account in evaluating the impact of disclosure on the public interest.'" Finding that the public interest in disclosure outweighed the privacy interests of the property owners, Howell rejected the agency's further claim that at least names should be protected. Instead, she observed that "disclosure of HMGP sellers' names would not only enable identification of fraud against the government – itself an important public interest – but would also assist the public in determining whether government actors have themselves committed fraud, coerced private citizens into selling their property, or paid sellers the full amounts they were due under the HMGP's terms." (*National Public Radio, Inc., et al. v. Federal Emergency Management Agency, et al.*, Civil Action No. 17-91 (BAH), U.S. District Court for the District of Columbia, Nov. 21)

Judge James Boasberg has again ruled that a suit brought against the Department of State by Judicial Watch and Cause of Action Institute alleging violations of the **Federal Records Act** because the agency failed to pursue an Attorney General's investigation to recover more emails from former Secretary of State Hillary Clinton's private email server and some Blackberry devices she used when transitioning to her position is **moot** because the FBI has now done everything reasonably possible to recover any remaining emails. Boasberg had ruled against Judicial Watch and Cause of Action Institute previously based on the agency's attempts to recover the emails from Clinton and her staff, as well as the then-uncompleted FBI investigation looking into Clinton's possible misuse of classified information. However, on appeal, the D.C. Circuit ruled that the State Department was required to do everything possible to recover the records, including asking the Attorney General to investigate. At the time the D.C. Circuit ruled, the FBI was still analyzing Huma Abedin's emails that had been recovered from a laptop she shared with her ex-husband Anthony Weiner. It was also unclear the extent to which efforts had been made to recover any emails Clinton sent from her Blackberry devices, since those devices were not directly related to the FBI's investigation of Clinton's email server. But by the time of Boasberg's second ruling, those issues had been clarified and, again, Boasberg found the State Department had now done everything possible to recover any remaining records. Boasberg pointed out that the Chief Records Officer at the National Archives now joined the State Department and the FBI in attesting that there were no more recoverable records. Boasberg observed that "in other words, the agencies themselves believe all emails are either recovered or fatally lost." Judicial Watch and Cause of Action Institute argued that the government had not shown that a FRA investigation would be futile. But Boasberg pointed out that "this, however, is no ordinary case. The Government has *already* deployed the law-enforcement authority of the United States to recover Clinton's emails, as the FBI has sought those records as part of its investigation into whether Clinton mismanaged classified information." He pointed out that his review of the supplemented record "confirms that the FBI has exhausted all imaginable investigative avenues." Boasberg observed that "in other words, the Attorney General's investigative arm joins Defendants' conclusion that there are no remaining emails for State to recover. The FBI so concluded as part of an investigation related to national security, in which it had every incentive to 'shake the tree' with all its might. It strains credulity that the Attorney General would implement a more exhaustive search in response to a federal-records request." Both Judicial Watch and Cause of Action Institute argued the government should do even more. Judicial Watch suggested that third parties could be queried to see if they had any relevant emails.

Responding to that suggestion, Boasberg pointed out that "while it is plausible, albeit barely, that some third parties *might* retain relevant records nearly a decade after the conversations, and that the FBI *might* convince such parties to turn them over voluntarily, the Attorney General has no way to know who those third parties might be. The FBI understandably deemed this path too far afield to pursue, and the Court once again concludes that it is implausible that the Attorney General would buck its own investigative arm to demand otherwise." (*Judicial Watch, Inc. and Cause of Action Institute v. Rex W. Tillerson, et al.*, Civil Action No. 15-785 (JEB) and No. 15-1068 (JEB), U.S. District Court for the District of Columbia, Nov. 9)

Judge Beryl Howell has ruled that David Hardy, an attorney and Internet blogger on firearms policy, is entitled to $20,095.95 in **attorney's fees** from the Department of Justice's Office of Inspector General, but is not entitled to fees from the Bureau of Alcohol, Tobacco and Firearms because he did not show that his suit against that agency caused it to disclose responsive records. Hardy submitted FOIA requests to OIG and BATF for records on BATF's policies on registered handguns and a 2007 OIG report on the agency's National Firearms Registration and Transfer Record. OIG told Hardy that the records he requested were protected by **Exemption 5 (deliberative process privilege)**. OIG eventually withheld 60 documents, three of which Howell ultimately ordered the agency to disclose. OIG also disclosed five other documents for which Howell found the agency had failed to substantiate its claim of exemption. BATF disclosed 539 documents. Hardy filed a motion for attorney's fees, arguing that his litigation had caused the agencies to disclose the records. However, Howell accepted BATF's reasons for its delay in responding to Hardy's request, finding that Hardy's litigation was not the cause of the agency's disclosure. She noted that in *Codrea v. BATF*—another attorney's fees case against BATF – she had found that the agency experienced a substantial backlog processing FOIA requests and congressional requests for the "Fast and Furious" records. She pointed out that "ATF has fully explained that the delays due were due to backlog and other projects and has provided a sufficient description of the administrative difficulties to establish that causation is lacking here." As to OIG, she observed that "both the fact that OIG produced records when a scheduling order was in place, after initially declining to do so, and the fact the plaintiff 'obtained relief through. . .a judicial order, by partial grant of the plaintiff's cross-motion for summary judgment,' establishes that the plaintiff is eligible for fees from OIG." Howell found that disclosure of the records from OIG was in the public interest. She rejected the agency's claim that Hardy had a commercial interest in the records. She pointed out that "the plaintiff has already blogged about the documents he received, and his past publications indicate his scholarly interest in the topic. He has shared the information he received with 'law professors and attorneys interested in the right to arms and in firearms law,' and he did not charge fees for that distribution." She indicated that Hardy "is entitled to fees for time spent reviewing the adequacy of the defendants' production to determine how to proceed in this litigation." She agreed with the agency that Hardy had a limited degree of success and reduced his fee request by sixty percent. She found that Hardy was eligible for fees on fees – fees for litigating the attorney's fees issue – but found that "the same reduction will be applied to the plaintiff's fee request for fee litigation." (*David T. Hardy v. Bureau of Alcohol, Tobacco, Firearms and Explosives, et al.*, Civil Action No. 15-1649 (BAH), U.S. District Court for the District of Columbia, Nov. 9)

Judge Ketanji Brown Jackson has sharply criticized the FBI's conclusory affidavits for the fourth time, and although she gave the agency another chance to sufficiently explain its processing of Christopher Brick's FOIA request, she also made clear if the agency still fell short in its supplemental affidavit, she would order the release of the 12 redacted pages at issue. Jackson pointed out that "the proffered declarations do not provide a sufficient justification for these withholdings, because the declarations provide no details about, or context for, the FBI's redaction determinations." The agency told Jackson that it had used its 100-year rule, as well as institutional knowledge, to determine whether individuals were deceased. But she noted that "given

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the nature of the records here and the state of modern technology, it is not at all clear why the FBI thinks that even a successful application of the 100-year rule – standing alone – would constitute a reasonable effort to determine the death status of the individuals in question." She indicated that "in the future, this Court expects the FBI to be vigilant in its submission of supporting materials, to provide the Court with documents that will enable review of the agency's FOIA withholdings 'in the first instance, rather than waiting to be prompted to do so by a Court Order.'" She warned the agency that "if the FBI fails to furnish a supplemental declaration that contains sufficient detail for the Court to ascertain the particular bases for the government's withholdings, this Court will rely solely upon the insufficient materials that have thus far been submitted, and as a result, will grant Plaintiff's cross motion for summary judgment and require production of unredacted copies of these 12 pages of records." (*Christopher Brick v. Department of Justice*, Civil Action No. 15-1246 (KBJ), U.S. District Court for the District of Columbia, Nov. 9)

Wrapping up two consolidated case brought by National Security Counselors against the CIA pertaining to its FOIA policies, Judge Beryl Howell has ruled that NSC is eligible for **attorney's fees**, but that, while it is entitled to recover its entire costs of $1,605.83, its fee request for $50,967.80 should be reduced by 25 percent in one case, and 70 percent in the other. Because Howell also concluded that the USAO Matrix, a replacement for the USAO *Laffey* Matrix that does a better job of accounting for specialized legal fees, should be used to calculate hourly fees, she ordered the parties to determine the final amount in light of those findings. The CIA argued that NSC was not entitled to any fees, primarily because NSC had not prevailed on enough of its claims to qualify as having substantially prevailed under FOIA's attorney's fees provisions. Howell acknowledged that NSC had prevailed on a minority of its claims, but explained that such limited success played a factor in the fee calculation but not in the threshold matter of eligibility. Assessing the degree of success in both cases, she pointed out that "without any other explanation for the CIA's declination initially to produce the records in electronic format, the litigation appears to have caused the CIA's changed policy, and the catalyst theory applies." As to another claim, she noted that the claim "alleged the CIA was using arbitrary cut-off dates in general and with respect to specific requests. Although summary judgment was granted to the CIA on this count, the grant occurred after the plaintiff voluntarily withdrew the claim. The plaintiff withdrew the claim because the CIA changed its cut-off date policy, but 'at the time this case was filed, and in fact for over a year *after*, CIA's policy was exactly as NSC alleged. CIA did not voluntarily reverse its position on this for ten months after vigorously defending it in its Motion to Dismiss.'" However, as to the majority of the claims, Howell agreed with the agency that NSC had not prevailed. Turning to the issue of entitlement, the CIA argued that NSC had a commercial interest in the litigation because it intended to make public the records it received. Howell rejected the claim, noting that "under that logic, however, this factor would weigh against an award of attorney's fees to experienced, frequent requestors with mission driven interests in using FOIA. While the result of that approach might be to depress the use of FOIA, this would not further the public disclosure policy animating this statute." She also found the CIA did not have a reasonable basis in law for resisting NSC's requests. She observed that "the plaintiff's success in changing policies inimical to FOIA is sufficient to demonstrate that this factor weighs in favor of the plaintiff." NSC argued that the LSI *Laffey* Matrix, which better accounted for the going rates for specialized litigation than did the USAO *Laffey* Matrix, should apply. Here, however, Howell found the NSC had not provided sufficient support for the use of the LSI *Laffey* Matrix. She explained that "given the shortcomings of the USAO *Laffey* Matrix, which the government does not defend, and the availability of the newest methodology to apply to work completed prior to and after June 2015, the 2015 USAO Matrix will be applied here to determine the rates throughout the entire period of this litigation." (*National Security Counselors v. Central Intelligence Agency*, Civil Action No. 11-44 (BAH) and No. 11-445 (BAH), U.S. District Court for the District of Columbia, Nov. 21)

Judge Christopher Cooper has resolved the privacy issues remaining in a case brought by the American Immigration Lawyers Association against the Executive Office for Immigration Review for identifying information about immigration judges who had been the subject of complaints by balancing the individual judges' privacy interest against the public interest. The case was on remand from the D.C. Circuit, which found the agency could not use a categorical application of **Exemption 6 (invasion of privacy)** because the privacy interests were too varied. Instead, the district court was ordered to do an individualized balancing. After winnowing complaints about 201 judges originally requested by AILA to 34, Cooper reviewed the circumstances pertaining to each judge individually, deciding that the privacy interest outweighed the public interest as to 20 judges, but that the identities of the 14 remaining judges should be disclosed. Based on the guidance from *American Immigration Lawyers Association v. Executive Office of Immigration Review*, 830 F.3d 667 (D.C. Cir. 2016), Cooper pointed out that "on the whole, the Court believes that the balancing of public interests and privacy interests typically weights towards disclosure in 'the case of a sitting judge with a substantial number of serious and substantiated complaints,' and against disclosure in the case of a retired judge with a small number of substantiated complaints." Cooper explained in detail his reasons for reaching his conclusions in each case. (*American Immigration Lawyers Association v. Executive Office for Immigration Review, U.S. Department of Justice, et al.*, Civil Action No. 13-00840 (CRC), U.S. District Court for the District of Columbia, Nov. 17)