



National Science Foundation • Office of the Inspector General
4201 Wilson Boulevard, Suite II-705, Arlington, Virginia 22230

February 7, 2014

VIA EMAIL AND FEDEX

Hans Bader, Esq.
Senior Attorney
Competitive Enterprise Institute
1899 L Street, NW, 12th Floor
Washington, DC 20036
hbader@cei.org

Re: FOIA Request No. 14-9

Dear Mr. Bader:

This letter responds to your Freedom of Information Act (FOIA, 5 U.S.C. § 552) request, which we received on December 20, 2013¹ via the NSF FOIA Officer, for documents “related to a National Science Foundation Memorandum and the inquiry that led to it. That document was the Office of Inspector General Office of Investigations *Closeout Memorandum*, Case Number A09120086” (Emphasis in original.) You requested documents in eleven specific categories:

1. Any documents dated or created after November 16, 2009 and before August 31, 2011, concerning the “critics” or “disciplinary experts” cited on page 3 of that memorandum, or concerning or discussing any interview or communications with them.
2. The “publicly available documentation” cited on page 2 of that memorandum.
3. Any documents specifying or listing the author or authors of that memorandum.
4. Any documents dated or created after November 16, 2009 and before August 31, 2011 concerning or discussing any alleged data falsification, data tampering, research misconduct, or scientific or other misconduct by Michael Mann.
5. Any documents dated or created after November 16, 2009 and before August 31, 2011, concerning, discussing, or communicating with Steve McIntyre or Stephen McIntyre or Ross McKittrick, or Richard Lindzen.
6. Any documents dated or created after November 16, 2009 and before August 31, 2011 concerning or discussing David Verardo, William Easterling, or Eugene Wahl which discuss or mention either (a) any communication or relation or connection or

¹ Date of constructive receipt. Actual receipt occurred on January 16, 2014.

collaboration on their part with Michael Mann, or (b) any investigation or allegation of data falsification or data tampering or data deletion or research misconduct or scientific misconduct.

7. Any documents dated or created after November 16, 2009 and before August 31, 2011, regarding (a) any document destruction, tampering, or deletion by Eugene Wahl or David Verardo, or (b) any allegations of document destruction, tampering, or deletion, by Eugene Wahl or David Verardo.
8. Any documents dated or created after November 16, 2009 and before August 31, 2011 concerning or discussing Michael Mann.
9. Any documents dated or created after November 16, 2009 and before February 28, 2011, concerning any National Oceanic and Atmospheric Administration or Department of Commerce investigation regarding Michael Mann or Eugene Wahl.
10. Any documents concerning any investigation of Mann by Pennsylvania State University for data falsification or data tampering or research misconduct or scientific misconduct.
11. Any records which (a) were sent to or by or copied to NSF employee David Verardo; (including those cc'd to Verardo by NSF's general counsel); (b) which cite or reference or communicate with Michael Mann; and (c) were dated or created between January 1, 2003 and December 31, 2003.

Regarding categories 1² and 3, your request is denied because the records are covered by FOIA exemptions (b)(6) (records the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), and (b)(7)(C) (records the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy).

Regarding category 2, responsive records are attached.

Regarding category 4, non-exempt responsive records are attached.³ Under FOIA exemptions (b)(6) and (b)(7)(C), information that constitutes an unwarranted invasion of personal privacy is exempt from disclosure. To protect the privacy interests of individuals who were not, with respect to the matter or matters described in the requested records, subject to successful criminal prosecution, recent civil legal action, or debarment or voluntary exclusion government-wide, we have redacted the names, titles, and other identifying information for all such individuals, pursuant to FOIA exemptions (b)(6) and (b)(7)(C).

Your request for other records that are responsive to category 4 is denied because the records are covered by one or more of FOIA exemptions (b)(5) (pre-decisional deliberative agency records), (b)(6) (records the disclosure of which would constitute a clearly unwarranted

² In the context of the memorandum, "disciplinary experts" refers to experts in a scientific discipline.

³ We note that in interpreting the description of this category of records, we considered records that discussed procedural details, or background information not indicative of misconduct, or other similar matters, to be outside the scope of the request.

invasion of personal privacy), and (b)(7)(C) (records the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy).

Regarding categories 5, 6, 7, 9, and 11, because the descriptions mention specific individuals other than Michael Mann, we can neither confirm nor deny the existence of an OIG law enforcement matter involving the individuals. Your requests are denied under FOIA exemptions (b)(6) and (b)(7)(C).

Regarding categories 8 and 10, any records responsive to these categories have been processed, and provided or withheld, as part of the responses to categories 2 and 4.

If you are not satisfied with my decision, you may appeal to the Assistant Inspector General for Legal, Legislative, and External Affairs, Ken Chason, by writing to him at the National Science Foundation, 4201 Wilson Boulevard, Arlington VA 22230. Alternatively, you may appeal directly to the General Counsel of the Foundation, at the same address.⁴ If you wish to appeal to either the Assistant Inspector General or the General Counsel, you must file your appeal within ten business days of receipt of this letter. If you submit an appeal to the Assistant Inspector General and his decision is negative, you may then appeal to the General Counsel. All appeals will be acted on within 20 business days after receipt.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen W. Bross". The signature is fluid and cursive, with the first name "Stephen" being more prominent.

Stephen W. Bross, J.D.
Investigative & FOIA Attorney

Enclosures

⁴ For appeals to NSF's General Counsel, note the requirements of 45 C.F.R. § 612.9(a): "You must make your appeal in writing and it must be received by the Office of the General Counsel within ten days of the receipt of the denial (weekends, legal holidays, and the date of receipt excluded). Clearly mark your appeal letter and the envelope 'Freedom of Information Act Appeal.' Your appeal letter must include a copy of your written request and the denial together with any written argument you wish to submit."