



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

OFFICE OF GENERAL COUNSEL

September 3, 2021

Hans Bader
Liberty Unyielding
1236 N. Stafford St.
Arlington, VA 22201
hfb138@yahoo.com

Dear Mr. Bader,

This letter is in response to your Freedom of Information Act (“FOIA”) request No. SBA-2021-014836 in which you requested the following:

1. Emails in the covered date range about the constitutionality or unconstitutionality of prioritizing the award of grants to female-owned restaurants or to restaurants owned by blacks, Hispanics, or non-whites in any COVID-19 relief legislation or the American Rescue Plan Act, where such emails were sent or received by the SBA’s Administrator or general counsel or deputy general counsel, and where such emails were also sent or received by anyone outside the Small Business Administration.
2. Emails in the covered date range about the constitutionality or unconstitutionality of prioritizing the award of grants from the Restaurant Revitalization Fund in the American Rescue Plan Act, to small business concerns owned and controlled by women, or to socially and economically disadvantaged small business concerns, where such emails were sent to the SBA’s Administrator or general counsel or deputy general counsel, and where such emails were also sent or received by anyone outside the Small Business Administration.
3. Any email in the covered date range sent to or by the SBA Administrator about whether any provision in the American Rescue Plan (including any provision dealing with restaurants) violates constitutional provisions against racial discrimination or violates constitutional equal-protection provisions or complies with constitutional provisions regarding racial discrimination or equal protection.

The “covered date range” begins on February 1, 2021, and ends on the date on which you process this request, or June 23, 2021, whichever is earlier.

SBA is releasing the attached documents that are responsive to your request. Redactions have been made pursuant to FOIA Exemptions 4, 5, and 6. Exemption 4 protects commercial or financial information obtained from a person that is privileged or confidential. The redacted information consists of commercial information that is deemed confidential. Exemption 5 protects deliberative and pre-decisional materials written as part of the decision-making process in federal agencies. Exemption 6 protects information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” The Exemption 6 redacted information consists of personal cell phone numbers, which clearly falls under the protection of FOIA exemption 6.

SBA is withholding approximately 125 documents in full that are responsive to your request pursuant to FOIA Exemption 5. These documents consist of emails between SBA counsel and the Department of Justice; SBA counsel and the Office of Management and Budget, the Department of Treasury, and the Executive Office of the President. These emails include discussions about ongoing litigation against SBA regarding the Restaurant Revitalization Fund and are exempt from disclosure pursuant to Exemption 5, specifically, the attorney client privilege, attorney work product privilege and deliberative process privilege.

If you are dissatisfied with the Agency’s decision, you may file an administration appeal within 90 days of the date of this letter to:

Office of Hearings and Appeals
Attention: Oreoluwa Fashola, FOIA Office
409 3rd Avenue, SW – 8th Floor
Washington, D.C. 20416

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison in the Office of Hearings and Appeals, the Office of Government Information Services (“OGIS”), the Federal FOIA Ombudsman’s Office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770
877-684-6448

Sincerely,

/s/ Eric S. Benderson

Eric S. Benderson
Chief FOIA Officer

Office of General Counsel
U.S. Small Business Administration