

August 2, 2005

Donna E. Gilbert - District Manager
DCSE – Roanoke District Office
3535 Franklin Road, SW, Suite H
Roanoke, VA 24014

Re: Freedom of Information Act Request Response

Ms. Gilbert,

Please be advised that your reply of July 28th, 2005 is not a valid legal response to my FOIA request and unless you **immediately** provide the requested information this matter will be taken up in **Federal Court**. It should be noted that **you may be found personally guilty** under federal law, and punished accordingly. 5 U.S.C. § 552 (a)(4)(F).

As I previously stated, the information I requested is required to be provided to me by Federal regulations. Thus the Virginia statues you cited do not provide you with a legal reason to avoid providing me the information requested in the manner proscribed by Federal law. The state of VA can't pass laws that override **Federal** laws in administering a **Federal** program. A fact made clear by the very laws you cite which specifically allow you to provide the information in this situation. § 63.2-102 (B) "...shall not provide the record or information **unless permitted by state or federal law or regulation**". Thus since the information is required to be provided by federal law, this state law does not prohibit you from providing the requested information. (since it also includes state laws the Virginia FOIA is indeed a state law that would also negate using § 63.2-102 as an excuse... but we don't need to debate that as the Federal clause is sufficient)

Your response failed to comply with Federal law that required that you cite specific (federal) exceptions to support your denial and to provide an estimate of the volume of records being denied. You failed to state any Federal law/rule to support your denial. Unless you were the only person involved in denying my request, you also failed to provide me the names and titles or positions of each person responsible for the denial of such request. 5 U.S.C. § 552 (a)(6)(C)(i).

You also failed to provide any details or even mention the appeals process as required by Federal law, as such you may consider this an appeal and since you did not state who to send an appeal to I'll leave forwarding it on to you.

As you can see, you have **failed to comply** with Federal laws to provide the information, and have **violated** Federal Laws that detail how a denial is to be made. Please take **immediate** steps to provide the information so that I am not forced to resolve the matter in Federal District Court.

Sincerely,

Wesley Smith
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