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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

May 8, 2006

Mr. Robert K. Rickman  
5020 Campus Drive  
Newport Beach, CA 92660

Dear Mr. Rickman:

On May 2, 2006, we received via fax your "Freedom of Information Act Request" ("Request"). You are requesting "ALL INFORMATION AVAILABLE WITH REGARD TO THE ACTIVITIES OF THE APPRAISAL SUBCOMMITTEE RELATING TO TEMPORARY PRACTICE PERMIT REQUESTS." More specifically, you requested:

1. All **Appraisal Subcommittee** audit documents of individual States relating to compliance with Federal policies regarding the issuance of **Temporary Practice Permit** requests.
2. All **Appraisal Subcommittee** internal memoranda, electronic correspondences, letters, and telefaxes, relating to enforcement of Federal law and Appraisal Subcommittee policies relating to **Temporary Practice Permit requests.**
3. All **Appraisal Subcommittee** documentation received from certified or licensed appraisers from the various States objecting to the practices of the individual States whereby individual States may have denied or delayed requests for **Temporary Practice Permits.**
4. **Specific Appraisal Subcommittee** audit documents for the **States of Florida and Arizona** relating to compliance with Federal policies regarding the issuance of **Temporary Practice Permit** requests.
5. **Specific Appraisal Subcommittee** internal memoranda, electronic correspondences, letters, and telefaxes, relating to enforcement of Federal law and Appraisal Subcommittee policies relating to **Temporary Practice Permit requests for the States of Florida and Arizona.**
6. All **Appraisal Subcommittee** documentation received from certified or licensed appraisers from the various States objecting to the practices of the **States of Arizona and Florida** whereby these States may have denied or delayed requests for **Temporary Practice Permits.**

In your Request, you specified, among other things, that you preferred paper copies sent to your address above, and that you are not an educational, scientific, or news-related person or entity. You also requested a waiver of fees and costs relating to your request under 12 C.F.R. § 1102.306(e)(1)(x). That paragraph allows the ASC to waive record disclosure fees if disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Determinations regarding your waiver request are delegated from the ASC to the ASC's Executive Director, or his or her designee. You may appeal the Executive Director's waiver determination to the ASC's Chairman under 12 C.F.R. § 1102.306(g).

As Executive Director, I have determined to deny your fee waiver request for the following reasons. First, you failed to specify how disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

In addition, it does not appear that disclosure of the requested records would be likely to contribute significantly to public understanding of the operations or activities of the government. While we have not performed any searches of our records relating to your request, we believe that most of the records that may fall within your Request already are readily available to the public in the ASC's Freedom of Information Act ("FOIA") Reading Room.\* The full electronic disclosure of these documents completely satisfies the ASC's duty to the public under FOIA, and any further searches of our records in response to your Request would add little or nothing to the information already publicly available.

Second, you asserted, without any explanation, that disclosure of the requested records is not primarily in your commercial interest. Notwithstanding your assertion, we believe that your Request was made primarily to forward your commercial interest. From my staff's telephone conversations with you, we understand that you are a certified general real estate appraiser in California, and that you might be considering performing appraisal assignments in other States. To perform those assignments, you would have been required by those States to apply for temporary practice permits. Most State temporary practice applications require disclosure of past criminal history. Based on my staff's telephone conversations with you, you chose not to complete and file those applications because the application would cause you to disclose that you had been convicted of a misdemeanor at some time in your past.

Mr. Weinberg of my staff spoke to you at length about your situation, noting: 1) that disclosure of [DELETION] information would not necessarily have precluded you from obtaining a temporary practice permit; 2) that the requested disclosure is a common State practice to assist the State in determining whether to award professional credentials or permits; and 3) that nothing in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI") prohibits States from requesting such information. You disagreed with Mr. Weinberg and essentially claimed that requesting information about [DELETION] was unreasonable and against your rights as a U.S. citizen. Because you chose not to answer this inquiry on the temporary practice application forms and failed to complete and file your temporary practice application forms, you were legally unable to perform appraisal work in States outside of California. Your choice not to answer the State's [DELETION] inquiry harmed your commercial interests.

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\* The FOIA Reading Room can be reached by pasting <http://www.asc.gov/default.aspx?id=70> into your Internet browser. Then, select the "State Field Review Correspondence" and "Other Correspondence" tabs at the top of the page and choose the keyword "temporary practice" in the dropdown box. With the exception of a few older documents, the searchable database of records at these two tabs dates back to 1997, approximately to the same time that ASC Policy Statement 5, *Temporary Practice*, became effective. In addition, you may view and download the ASC's "concept," "proposing," and "adopting" *Federal Register* documents relating to ASC Policy Statement 5 by selecting the "Federal Register" tab in the FOIA Reading Room at <http://www.asc.gov/FileListDefault.aspx?id=73> and looking down the list of documents and choosing those relating to temporary practice.

Because you do not qualify for a fee waiver, we turn to 12 C.F.R. § 1102(e) for guidance regarding appropriate fees. Under paragraph (1) of that section, we are required to charge you for the direct costs of search, duplication, and review of records, even if no responsive records are located or, if located, are determined to be exempt from disclosure. Your Request did not specify how much you would be willing to pay for searching, duplicating, and reviewing the requested records if such a waiver was not granted. We, therefore, are required to estimate those costs. After reviewing that estimate, you must agree in writing to pay for the costs of search, duplication, and review prior to our initiating any records search.

To estimate these costs, we must first analyze the specifics of your request. We believe that your Request consists of the first three items of your six-item listing. The first three items are very broad and include the more specific final three items. As a result, your Request covers:

1. All Appraisal Subcommittee audit documents of individual States relating to compliance with Federal policies regarding the issuance of Temporary Practice Permit requests[;]
2. All Appraisal Subcommittee internal memoranda, electronic correspondences, letters, and telefaxes, relating to enforcement of Federal law and Appraisal Subcommittee policies relating to Temporary Practice Permit requests[; and]
3. All Appraisal Subcommittee documentation received from certified or licensed appraisers from the various States objecting to the practices of the individual States whereby individual States may have denied or delayed requests for Temporary Practice Permits.

Your Request will require us to search and review almost all documents in our possession since the inception of the ASC in 1989. We possess thousands of physical documents. While it is difficult to estimate, we believe that, to fulfill your Request, our Administrative Officer would have to spend at least 40 hours to perform the initial manual search of our paper documents. After the search phase, the Administrative Officer, with the assistance of the ASC's General Counsel, would have to review the records to determine which records, and what portions of those records, may be disclosed to you. We are obligated to withhold from public release documents and portions of documents that contain information protected by the Privacy Act of 1974, 5 U.S.C. 552a, and the exemptions from disclosure contained in FOIA, 5 U.S.C. § 552(b). We believe that Administrative Officer would have to expend at least 16 hours reviewing the documents, and the General Counsel would have to expend four hours reviewing the documents to ensure that protected information is not be released. The releasable records then would have to be duplicated by the Administrative Officer, which we estimate would take four hours, and, finally, the documents would have to be sent to you via U.S. Mail. Those shipping costs also would be payable by you.

Paragraph (3) of § 1102(e) sets out the fees that the ASC may charge for these purposes. The charge for manual searches for records is equal to the basic rate of pay for the employee making the search, plus 16% to cover employee benefit costs. The same costs apply to computerized records. Some of our documents are computerized. The Administrative Officer would have to search for, and review, these documents. These documents, by and large, are not in a searchable database. They are digitized images of the paper documents. While they would not require physical handling like paper documents, these digitized documents still would have to be

searched and reviewed individually by the Administrative Officer. We estimate that her search and review would take 16 hours. The Administrative Officer then would have to print all of the found computerized records, which we estimate would take four hours, and the ASC's General Counsel, similar to paper records, would have to spend three hours to ensure that protected information is not released. The hourly amount to be charged for the Administrative Officer's time would be \$36.20. The General Counsel's hourly amount would be \$77.69. Finally, I, as Executive Director, would have to spend two hours supervising this entire process. My hourly amount would be \$84.48. Our cost estimate for fulfilling your Request, therefore, is:

**Administrative Officer:**

40 hours – Manual search of physical documents  
 16 hours – Review of found physical documents  
 4 hours – Copying found physical documents  
 16 hours – Search and review of computerized documents  
 4 hours – Printing found computerized documents  
**Total: 80 hours at \$36.20 per hour = \$2,896.00.**

**General Counsel:**

4 hours – Review of found physical documents  
 3 hours – Review of found computerized documents  
**Total: 7 hours at \$77.69 per hour = \$543.83.**

**Executive Director:**

2 hours – Supervision of entire process.  
**Total: 2 hours at \$84.48 per hour = \$168.96.**

**Grand total, without shipping costs, and other incidental charges = \$3,608.79.**

As noted above, under 12 C.F.R. § 1102.306(e)(1)(iv), you, as the requester, must agree in writing to pay these costs prior to our initiating any records search. In addition, under subparagraph (v) of that subsection, because the estimate cost exceeds \$250, if you agree in writing to pay for these costs, you must pay 20% of the estimated costs prior to our commencing our records search. Therefore, if you choose to go forward with your Request in its current form, please provide us in writing an agreement to pay these costs and include with that document an initial payment in the amount of \$721.75. Actual billing will be based on our actual costs.

Under subparagraph (vi) of this subsection, we will not release copies of the requested records to you until your invoice is paid in full. Under subparagraph (viii), should you fail to pay the final invoice amount on the 31<sup>st</sup> day following the day on which the invoice was sent, the ASC will charge you interest at the rate prescribed in 31 U.S.C. § 3717 from the date of the invoice. Finally, under subparagraph (ix), the time limit for the ASC to respond to your Request will not begin to run until we have received your written agreement to pay the estimated fees, together with your payment for 20% of the estimated fees.

As noted in our discussion earlier in this letter, most of the documents that would be responsive to your request are available to the public in the Freedom of Information Reading Room section of our Web site ([www.asc.gov](http://www.asc.gov)). There are no costs associated with searching and

retrieving records from our Web site. We encourage you to explore this option as it likely would be much more time and cost effective.

If you wish us to proceed with a manual search, please provide your written response, including your agreement to pay the associated costs and the 20% deposit.

Sincerely,

Ben Henson  
Executive Director