



U.S. OFFICE OF SPECIAL COUNSEL
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July 24, 2007

Mr. Joe Carson
10953 Twin Harbour Drive
Knoxville, TN 37934

Re: Freedom of Information Act Appeal
(File No. FO-07-2091)

Dear Mr. Carson:

I am writing in response to your letters dated June 22, 2007 and June 24, 2007. In the first letter, you appealed from the denial, by Mr. Christopher Kurt of this agency, of your request for expedited processing of the above-captioned Freedom of Information Act (FOIA) request; the second letter contained supplemental information in support of that request.

I have reviewed the FOIA request and the request for expedited processing included therein, Mr. Kurt's initial response to the request for expedited processing, and your appeal correspondence. You contend, in substance, that the records sought by your FOIA request may be relevant to a prior FOIA request now in litigation in Federal district court;¹ you also indicate, in substance, that the records are needed to confirm your suspicion and concerns about the Office of Special Counsel (OSC)'s exercise of investigative jurisdiction.

The relevance of any records responsive to the FOIA request to the pending litigation is not clearly apparent. The FOIA request seeks records of any matters investigated by OSC under 5 U.S.C. § 1216(a)(3), while the pending district court action involves a prior FOIA request for records of any matters investigated by OSC under § 552(4)(F) of the FOIA (one of the act's enforcement provisions).² It is also not clear how your suspicion and concerns about how OSC may have implemented its investigative jurisdiction under §§ 1216(a)(3) and 552(4)(F) relate to the issue involved in the FOIA litigation – *i.e.*, whether OSC properly responded to your request for records under the disclosure provisions of the FOIA.

In any event, I note that processing of your request began recently. Mr. Kurt has obtained investigative files that appear to be responsive to your request, and review of the files is underway. It is anticipated that a decision on your FOIA request will be sent to you

¹ Carson v. U.S. Office of Special Counsel, Civ. Action No. 06-1834 (PLF) (D.D.C.).

² At 5 U.S.C. § 552(4)(F).

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by Friday, August 17th. That being the case, there does not appear to be a need to expedite your request because it is being actively processed.

Based on all of the foregoing considerations, I am upholding the decision not to expedite the processing of your request. You may seek judicial review of this decision on your appeal by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. §§ 552(a)(4)(B) and 552a(g)(1).

Sincerely,



Erin M. McDonnell
Associate Special Counsel
for Legal Counsel and Policy