

Can NARA's GC that is a CRP legally decide FOIA disputes?

Brady Eames <ibuncle@yahoo.com>

Oct 24, 2014 1:50 AM

Posted in group: FOIA Advisory Committee

Dear agents of the United States, Now that the position of General Counsel (GC) of the National Archives and Records Administration (NARA) is a career reserve position (CRP) (see NARA's list of CRP at *79 FR 42942 of July 23, 2014*) and is also NARA's Freedom of Information Act Public Liaison (**FOIA Liaison**) (see <http://www.archives.gov/foia/contacts.html> and <http://www.foia.gov/report-makerequest.html>), will it be legal under *5 CFR 214.402(c)(1)* for such GC/**FOIA Liaison** to make decide disputes between a FOIA requester and the NARA under *5 USC (a)(6)(B)(ii)* and *(I)*? Sincerely, Brady Eames

Can NARA's Deputy Archivist that is a CRP legally adjudicate FOIA appeals?

Brady Eames <ibuncle@yahoo.com>

Oct 24, 2014 2:23 AM

Posted in group: FOIA Advisory Committee

Dear agents of the United States, Since the position of **Deputy Archivist** of the United States (Deputy) is a career reserve position (CRP) (see the National Archives and Records Administration (NARA) list of CRP at *79 FR 42942 of July 23, 2014*) and is also NARA's Freedom of Information Act appellate adjudicator (FOIA Adjudicator) (see *79 FR 56512 of September 22, 2014* and <http://www.archives.gov/foia/foia-guide.html#appeals>), will it be legal under *5 CFR 214.402(c)(1)* for such Deputy **FOIA Adjudicator** to make appellate adjudications in cases of a FOIA requester v. the NARA under *5 USC (a)(6)(A)(ii)*? Sincerely, Brady Eames

Responses from the OPM re: OPM's FOIA liaison and outdated FOIA regulations

Brady Eames <ibuncle@yahoo.com>
Posted in group: FOIA Advisory Committee

Oct 24, 2014 5:11 PM

On Friday, October 24, 2014 2:54 PM, Brady Eames <ibuncle@yahoo.com> wrote:

Dear OPM-FOIA agents, Thank you for the reply. I will forward it on to all other concerned agents of the United States. Sincerely, Brady Eames

On Friday, October 24, 2014 12:27 PM, "Ford, Tiffany" <Tiffany.Ford@opm.gov> wrote:

Good Afternoon Mr. Eames,

This is in response to your two emails that you submitted to Trina Porter. She asked that I respond to your emails. In your first email, you state "referring to 'foia.gov' for contact information for the FOIA Public Liaisons of the OMB, GSA, OPM, DOJ, NARA and NLRB, it appears that either they have NOT been assigned email addresses or the DOJ/OIP is/are CONCEALING them from the public". In your second email, you state "The FOIA regulations of the **Office of Personnel Management (OPM)** published in the 2014 edition of *Part 294 of Title 5 of the CFR* appear to be so OUTDATED that they do NOT guide the public with respect to the rights and obligations of a United States citizen and of the OPM under both *Pub. L. 104-231*'Electronic Freedom [of] Information Act Amendments of 1996' and *Pub. L. 110-175*/Openness Promotes Effectiveness in our National Government Act of 2007". Please be advised that these are not FOIA requests but rather inquiries. A FOIA request is a request for records, not for general inquiries and open ended questions.

OPM does not maintain FOIA.gov however, we are presently working to put the FOIA Public Liaison's contact information on our internet page. Trina Porter is aware that OPM's FOIA regulations are outdated and she is in the process of revising those regulations.

Sincerely,

Tiffany Ford
Freedom of Information Act
Office of the Chief Information Officer
U.S. Office of Personnel Management
1900 E. Street, NW, Room 5H41
Washington, DC 20415

Re: career reserved position prohibited occupational disciplines

Brady Eames <ibuncle@yahoo.com>

Oct 24, 2014 5:05 PM

Posted in group: FOIA Advisory Committee

Dear Ms. McGibbon, Thank you for your prompt response. Within the FOIA regulations of any Executive agency, I believe emphatically that the public has a right to know the title of such agency's officer who is accountable for initial adjudications. I must be assured that important FOIA judgments are not being made by arbitrary and untrained personnel within such an agency. I hope you agree. Sincerely, Brady Eames

On Friday, October 24, 2014 2:51 PM, Shawne McGibbon <SMcGibbon@acus.gov> wrote:

Mr. Eames,

I received your voicemail and email inquiring about me—the general counsel of ACUS—serving in a career reserved SES position. Specifically, you seem concerned that 5 CFR 214.402(c)(1) somehow prohibits agency general counsels from serving in a career reserved position. I hope the following explanation helps clarify the matter for you.

First, agency general counsels are not specifically prohibited from serving in a career reserved position in the regulations you cited. Second, it is clear that the restrictions you cited in section (1) may be overcome if you read further to section (2)(i), which permits agencies to place in career reserved positions certain types of professionals (widely understood to include lawyers) in order to ensure impartiality of the Government. Similarly, section (2)(ii) says that certain positions “requiring impartiality, or the public’s confidence in impartiality, as determined by the agency in light of its mission” can be career reserved positions. Finally, I would add that OPM approved the ACUS general counsel position as a career reserved position.

ACUS is an independent executive branch agency whose mission is to provide non-partisan and impartial advice (about improving the efficiency, adequacy and fairness of administrative procedures in the federal government) to federal agencies, the President, Congress and the federal Judiciary. ACUS’s mission is what dictates the appropriateness of including the general counsel position in the career reserved category. I cannot speak to the appropriateness of career reserved status for general counsels at other agencies. I imagine that any decision to include their general counsels in career reserved positions would be dictated by the needs and mission of the particular agency.

I understand you have made another inquiry at our office today regarding the title of the officer who makes “initial FOIA adjudications.” ACUS has a staff of 16 individuals. As such, there is not a lot of hierarchy here. FOIA requests are handled by me, since I also wear the hat of Chief FOIA Officer. FOIA requests may also be handled by David Pritzker, who is the agency’s deputy general counsel and FOIA Public Liaison. These positions are noted in section 304.1 of our regulations. Appeals of adverse FOIA determinations are made to the Chairman of the agency, as noted in section 304.8 of ACUS’s FOIA regulations. Determinations made by the Chairman are final.

I hope this is responsive to your requests.

Shawne C. McGibbon | General Counsel



1120 20th Street, NW Suite 706 South . Washington, DC . 20036
(202) 480-2088 (o) . (202) 603-9544 (m) . (202) 386-7190 (f)
smcgibbon@acus.gov . www.acus.gov

From: Brady Eames [mailto:ibuncl@yahoo.com]

Sent: Friday, October 24, 2014 11:51 AM

Subject: career reserved position prohibited occupational disciplines

Dear agents of the United States, Referring to the "**SES Positions That Were Career Reserved During CY 2013**" (see *79 FR 42874-42965 of July 23, 2014*), it appears that certain "general counsel" and "advisor" are positions within certain Executive agencies, e.g. ACUS, NARA, FLRA, NLRB and OMB, which have been approved as a "career reserved position" by the OPM under *5 CFR 214.202*. With respect to the "occupational disciplines" which are prohibited under *5 CFR 214.402(c)(1)*, would not a "general counsel" or "advisor" have responsibility for or substantial involvement in the determination or public advocacy of the major controversial policies of such Executive agencies? Sincerely, Brady Eames

Re: career reserved position prohibited occupational disciplines

Brady Eames <ibuncle@yahoo.com>

Oct 24, 2014 10:43 PM

Posted in group: FOIA Advisory Committee

Dear Ms. McGibbon, Certainly you do not expect me to interpret the word "agency", as used in *1 CFR 304.4, 304.5 and 304.6*, to mean "General Counsel" or "Public Liaison". With respect to the OIP, please take a moment to review their FOIA regulations at *Part 16 of Title 28 of the CFR*. You will discover they are so OUTDATED that they do **NOT** guide the public with respect to the rights and obligations of a United States citizen and of the DOJ under the **Pub. L. 110-175/Openness Promotes Effectiveness in our National Government Act of 2007**! In fact, almost all of the amendments to such FOIA regulations appear to have been promulgated nearly **SIXTEEN (16) YEARS AGO on June 1, 1998**. While the **Director of the OIP** and agent of the DOJ named Melanie Pustay preaches and advises while sitting as a member of the **FOIA Advisory Committee** now functioning and being administered by the OGIS, she is issuing requirements and guidance to the rest of the Executive Branch with respect to "open government" FOIA regulations! **What hypocrisy!** Sincerely, Brady Eames

On Friday, October 24, 2014 3:05 PM, Brady Eames <ibuncle@yahoo.com> wrote:

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