

ACUS defied its own FOIA recommendation by refusing to notify of OGIS services!!!

Brady Eames <ibuncle@yahoo.com>

Nov 3, 2014 1:32 PM

Posted in group: **FOIA Advisory Committee**

Dear agents of the United States, As you will see in these forwarded initial FOIA adjudications (see attachments), ACUS' **Senior Executive/Career Reserved General Counsel/Chief FOIA Officer** has defied the seventh FOIA recommendation of the **ACUS** adopted on June 5, 2014 under *2014-1 "Resolving FOIA Disputes Through Targeted ADR Strategies"* (see <http://www.acus.gov/recommendation/resolving-foia-disputes-through-targeted-adr-strategies>) and refused to notify me of the mediation and facilitation services of the Office of Government Information Services!!! Sincerely, Brady Eames

On Thursday, October 30, 2014 4:56 PM, Shawne McGibbon <SMcGibbon@acus.gov> wrote:

Dear Mr. Eames:

Please find a response to your FOIA request attached.

Shawne C. McGibbon | General Counsel



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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

October 30, 2014

Mr. Brady Eames
478 E. 700 North
Logan, UT 84321

Re: FOIA Case 2015-6

Dear Mr. Eames:

The Administrative Conference of the United States (ACUS) received your revised FOIA request on October 28, 2014. Many statutes and regulations are written to cover all agencies, regardless of size. Often, regulatory schemes assume that there are large bureaucracies with many components to be managed. As a “micro” agency, we have found that there are more positions contemplated in federal statutes, executive orders/memoranda, and regulations, than we have staff. Nevertheless, we make every effort to comply—if not with the precise letter, then the spirit—of the various requirements. We hope that you find the information below responsive to your request.

Description of Records Sought:

(1) The lists of any and all Executive departments and/or agencies and the respective heads of which were designated by the United States’ President Barack Obama to be members of the ACUS under 5 USC 593(b)(3) and 1 CFR 301.3(c).

By Order of President Obama dated October 6, 2010, the following federal entities were designated to be members of ACUS:

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs

*Bureau of Consumer Financial Protection
Environmental Protection Agency
Equal Employment Opportunity Commission
Federal Deposit Insurance Corporation
Federal Housing Finance Agency
General Services Administration
Merit Systems Protection Board
National Archives and Records Administration
Office of Government Ethics
Office of Management and Budget
Office of Personnel Management
Office of Science and Technology Policy
Small Business Administration
Social Security Administration*

The Administrative Conference Act provides that the agency head or the agency head's designee may serve. Each entity's ACUS member (whether the head or the designee of the head) is identified at: www.acus.gov/directory/government-member.

(2) The lists of any and all Executive departments and/or agencies and the respective heads of which were designated by the United States' President Barack Obama to be members of the council of the ACUS under 5 USC 595(b) and 1 CFR 301.3(b).

5 U.S.C. § 595(b) does not specify designation by the President of particular departments or agencies or their heads for membership in the Council. The statute provides for selection by the President of 10 named individuals, other than the Chairman, for membership in the Council, not more than half of whom shall be federal government employees. ACUS currently has 4 Council members who are federal government employees. The Council roster and their affiliations can be found here: <http://www.acus.gov/directory/council>.

(3) Any and all advise furnished to the agencies of the Department of Justice titled Office of Information Policy and the Executive Office of United States Attorneys and/or to the National Archives and Records Administration and/or to the Office of Government Information Services with respect to the publication in the FEDERAL REGISTER of separate and current statements which describe the respective central and field organizations of the departments and agencies of the Executive branch of the United States Federal government.

The organizational statements required by FOIA to be published in the *Federal Register* were published at 75 Fed. Reg. 68941 (Nov. 10, 2010) and are codified at 1 CFR Part 301, Organization and Purpose. As a very small agency with 16 employees, ACUS has its entire "central office" at 1120 20th Street NW, Washington, DC 20036. ACUS has no field offices. Reports required to be submitted to the Department of Justice's Office of Information Policy are all available on the ACUS website at: <http://www.acus.gov/foia>.

ACUS Recommendation 2014-1, Resolving FOIA Disputes Through Targeted ADR Strategies, includes advice to the National Archives and Records Administration's Office of Government Information Services, and is available on the ACUS website at:

<http://www.acus.gov/recommendation/resolving-foia-disputes-through-targeted-adr-strategies>.

We are unaware of any advice furnished to the Executive Office of United States Attorneys.

(4) Separate and current statement describing the central and field organizations of each and every component of the ACUS under the following laws:

- (a) *Title 44 of the USC § Chapter 15-Federal Register and Code of Federal Regulations*
- (b) *Title I of the CFR § Chapter I-Administrative Committee of the Federal Register*
- (c) *Title 44 of the USC § Chapter 31-Records Management by Federal Agencies*
- (d) *Pub. L. 107-347, commonly cited as the "E-Government Act of 2002"*
- (e) *Pub. L. 110-175, commonly cited as the "Openness Promotes Effectiveness in our National Government Act of 2007"*
- (f) *Pub. L. 111-352, commonly cited as the "Government Performance Results Act (GPRA) Modernization Act of 2010"*
- (g) *Title 5 of the USC § Appendix-Federal Advisory Committee Act.*

See the first paragraph of the response to request #3 above. Also note that because ACUS has only 16 employees, the agency is not subdivided into separate components.

(5) Lists of each and every electronic website address of every component of the ACUS which has been established on the internet and at which the public may obtain information, make submittals or requests, or obtain decisions.

ACUS has a single website at: www.acus.gov. All records posted electronically by the agency, whether required or discretionary, are available and searchable on a variety of screens and pages within that website. Because ACUS has only 16 employees, the agency is not subdivided into separate components. Agency records pertaining to the activities of the Assembly (the voting membership meeting in plenary session) and other (non-voting) members of ACUS are also posted on the acus.gov website.

(6) Documentation of the designation of the following Officers of the ACUS and of their respective established offices and of their respective physical addresses and electronic mail addresses:

- (a) General Counsel (see <http://www.acus.gov/directory/staff>)
- (b) Chief Financial Officer (see *31 USC § 901*),
- (c) Chief Information Officer (see *44 USC § 3506(a)(2)*),
- (d) Chief Human Capital Officer (see *5 USC § 1401*),
- (e) Chief Freedom of Information Act Officer (see *5 USC § 552(k)*),
- (f) Chief Acquisition Officer (*41 USC § 1702*)
- (g) Chief Operating Officer (see *31 USC § 1123*),
- (h) Performance Improvement Officer (see *31 USC § 1124(a)*),

- (i) Records Management Officer (see 44 USC 3101 and 3102, 36 CFR § 1220.34(a)),
- (j) Advisory Committee Management Officer (*see 5 USC, Appendix-Federal Advisory Committee Act § 8(a) and 41 CFR 102-3.105(c)*)
- (k) Research Director (see <http://www.acus.gov/directory/staff>)
- (l) Executive Director (see <http://www.acus.gov/directory/staff>)

Documentation for the positions you identified in items (a), (e), (j) and (l) is attached as an appendix to this document. As a “micro” agency with only 16 employees, ACUS does not have on staff a Chief Financial Officer (CFO), Chief Human Capital Officer, Chief Acquisition Officer, Chief Operating Officer (COO), or Performance Improvement Officer (PIO). The ACUS Chief Financial and Operations Officer and Executive Director perform some of the duties of a CFO and COO. The Research Director position is currently vacant.

With regard to the CFO, the Chief Human Capital Officer, and the Chief Acquisition Officer positions, ACUS is not one of the 24 federal departments and agencies subject to 31 U.S.C. § 901, 5 U.S.C. §. 1401 (which incorporates by reference the 24 federal departments and agencies listed in 31 U.S.C. § 901) or 41 U.S.C. § 1702 (which also incorporates by reference 31 U.S.C. 901). For your general information, the Chairman of ACUS is the only individual authorized to bind the agency through contracts (5 U.S.C. § 595(c)(10)) and hire employees (5 U.S.C. § 595(c)(7)). In addition, since ACUS only has 16 employees (including the Chairman), the agency contracts with the General Services Administration for payroll and human resource services.

Similarly, there is no Performance Improvement Officer at ACUS. The Government Performance and Results Modernization Act of 2010 amended the Government Performance and Results Act of 1993 to include a provision that calls for the creation of Performance Improvement Officers at some federal agencies. The original Act and subsequent amendments generally apply only to larger agencies. Nevertheless, ACUS does have strategic priorities and goals, which are set forth in our [annual budget justification](#) to Congress, and posted on the FOIA page of our website.

For the Chief Information Officer and Records Management Officer positions, there has been no official designation yet. However, information resources management responsibilities (particularly as they relate to program decisions, compliance with the Paperwork Reduction Act and reducing paperwork burden on the public, and privacy) and records management responsibilities are carried out by the ACUS General Counsel or under her direction.

(7) Description of the performance appraisal systems established in each and every component of the ACUS under the following laws:

- (a) *Title 5 of the USC § Chapter 43-Performance Appraisal*
- (b) *Title 5 of the CFR § Part 430, Subpart D-Performance Appraisal Certification for Pay Purposes*
- (c) *Title 5 of the CFR § Part 1330, Subpart D-Performance Appraisal Certification for Pay Purposes.*

(a) The following is a description/framework for ACUS's Performance Appraisal System (PAS) for SES Employees. The ACUS SES PAS is established to hold senior executives accountable for their individual and organizational performance in order to drive organizational excellence and results, including improving the overall efficiency of ACUS. ACUS recognizes the importance of aligning its strategic planning, budget and performance integration, performance appraisal, pay, and other award programs with the management of its human resources to promote efficient and effective attainment of its mission, program objectives, and strategic goals and initiatives. ACUS expects to achieve excellence in senior executive performance by:

1. Linking performance management with the results-oriented goals like the ones contained in the Government Performance and Results Act of 1993 and other strategic planning initiatives;
2. Setting and communicating individual and organizational goals and expectations;
3. Systematically appraising senior executive performance using measures that balance organizational results with customer, employee, or other perspectives;
4. Using performance results as a basis for pay, awards, development, retention, removal and other personnel decisions;
5. Identifying individual accountability for accomplishing ACUS goals and objectives;
6. Providing an annual assessment of agency performance overall and for each of its major program and functional areas;
7. Continually improving performance management by reviewing the system and the results of its application, and making refinements as necessary on no less frequently than an annual basis.

Please note that items 1-7 above, with the exception of items that specifically reference the senior executive service, also apply to the performance appraisals for ACUS non-SES employees.

(b/c) The ACUS appraisal system for SES employees has been approved by OPM, but ACUS has neither sought nor obtained certification for its SES appraisal system. Certification is not required.

(8) Lists of any and all positions in every component of the ACUS which were career reserved positions (CRP) within the Senior Executive Service (SES) and which, under 5 USC § 3132(b)(4), the ACUS was mandated to publish in the FEDERAL REGISTER by March 1 of 2011, 2012, 2013, 2014, but did not so publish, for the calendar years 2010, 2011, 2012 and 2013.

The positions include the following: General Counsel, Executive Director, and Research Director (currently vacant). For your information, ACUS does not publish this listing annually in the *Federal Register* because the Office of Personnel Management publishes a consolidated list for all agencies in an effort to save taxpayer money and increase efficiency. The most recent OPM notice states "The Office of Personnel Management is publishing a consolidated list for all agencies." (79 Fed. Reg. 42874, July 23, 2014).

(9) Lists of any and all members of the Performance Review Board(s) (PRB) which have been established by the ACUS for the calendar years 2010, 2011, 2012, 2013 and 2014 under 5 USC §4314(c) and 5 CFR § 430.310 and which, under 5 USC §4314(c)(4), the ACUS was mandated to publish in the FEDERAL REGISTER, but did not so publish, for the calendar years 2010, 2011, 2012, 2013 and 2014.

The ACUS Chairman is the only paid employee of ACUS authorized to review SES performance. Government members of the ACUS Council (who are appointed by the President, but are uncompensated by ACUS) may assist in the reviews at the request of the Chairman.

(10) The reports made to Congress by President Obama under the FACA § 6(b) and 41 CFR 102-3.175(a) stating either his proposals for action or his reasons for inaction with respect to the following recommendations made to him by the ACUS under 5 USC § 594(1) and 1 CFR § 301.4(a) on the dates so indicated:

- (a) 2011-6 "International Regulatory Cooperation"-(adopted December 8, 2011)
- (b) 2011-7 "The Federal Advisory Committee Act-Issues and Proposed Reforms" (adopted December 9, 2011)
- (c) 2012-1 "Regulatory Analysis Requirements" (adopted June 14, 2012)
- (d) 2012-2 "Midnight Rules" (adopted June 14, 2012)
- (e) 2012-5 "Improving Coordination of Related Agency Responsibilities" (June 15, 2012)

ACUS does not have records of reports made to Congress by President Obama, if any. If such records exist, they are not records of this agency.

Please refer to FOIA Case 2015-6 if you have further questions related to this FOIA request.

Sincerely,
ACUS FOIA Office

For 6(a) and 6(1)

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Administrative Conference of the United States

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1120 Twentieth Street NW, Suite 704 South, Washington, DC 20036
202-480-2080
202-386-7190
[Web Site](#)

Chairman	Paul R. Veroff
Executive Director	Matthew L. Wiener
Research Director	Geoffrey E. Lewis <i>vacant</i>
General Counsel	Shawne C. McGibbon
Deputy General Counsel	David M. Pritsker
Chief Financial and Operations Officer	Harry M. Seelman
Communications Director	Megan C. Kandelan

Council

Vice Chair	Thomasina V. Rogers
Member	Pheela D. Bansal
Member	Ronald A. Cass
Member	Steven P. Crosby
Member	Mariano-Florentino Cuellar
Member	Theodore B. Olson
Member	Edith Ramirez
Member	Jane C. Sherburne
Member	Geovette E. Washington
Member	(vacancy) <i>Danielle Gray</i>

The Administrative Conference develops recommendations for improving the fairness and effectiveness of procedures by which Federal agencies administer regulatory, benefit, and other Government programs

[Organizational Chart](#)

The Administrative Conference of the United States was established as a permanent independent agency by the Administrative Conference Act (5 U.S.C. 591-596) enacted in 1964. The Conference was the successor to two temporary Administrative Conferences during the Eisenhower and Kennedy administrations.

The Conference ceased operations on October 31, 1995, due to termination of funding by Congress. Congress reauthorized the Conference in 2004 and again in 2008. The 2004 legislation expanded its responsibilities to include specific attention to achieving more effective public participation and efficiency, reducing unnecessary litigation, and improving the use of science in the rulemaking process. Funding was approved in 2009, and the Conference was officially re-established in March 2010.

By statute the Administrative Conference has no fewer than 75 and no more than 101 members, a majority of whom are Government officials. The Chairman of the Conference is appointed by the President with the advice and consent of the Senate for a 5-year term. The Council, which acts as the executive board, consists of the Chairman and 10 other members appointed by the President for 3-year terms. Federal officials named to the Council may constitute no more than half of the total Council membership. The Chairman is the only full-time, compensated member of the Conference. Members representing the private sector are appointed by the Chairman, with the approval of the Council, for 2-year terms.



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Administrative Conference of the United States

Print Selected Office

Administrative Conference of the United States

FOIA Contact: To make a FOIA request to Administrative Conference of the United States please send request to:

Shawne McGibbon

FOIA Officer

Suite 706 South

1120 20th Street, NW

Washington, DC 20036

(202) 480-2088 (Telephone)

(202) 386-7190 (Fax)

FOIA Requester Service Center: Phone: (202) 480-2080

FOIA Public Liaison: David Pritzker, Phone: (202) 480-2080

Website: <http://www.acus.gov/foia/>



Chief FOIA Officer: Shawnee McGibbon,
General Counsel

What do these FOIA terms mean?

FACA Database Federal Advisory Committee Act

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Administrative Conference of the United States

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Agency Name:	Administrative Conference of the United States	Official Agency Name
Agency Abbr:	ACUS	Official Agency Abbreviation
Fiscal Year:	2014	This information applies to this Fiscal Year.
Agency URL:	http://www.acus.gov/	This item is not required but users generally find it helpful.
Last Update:		KF
Committee Management Officer Position Title:	Deputy General Counsel	This item is required. This can be the title the CMO is assigned, or wishes to use, or it can be simply CMO .
Committee Management Officer Prefix:		>This item is not required. This is the CMO's title or the form of formal reference, i.e., Dr., Mr., Col., Honorable, Ms., etc.
Committee Management Officer First Name:	David	This item is not required. This is the CMO's commonly used first name.
Committee Management Officer Middle Name:		This item is not required. This is the CMO's commonly used middle name.
Committee Management Officer Last Name:	Pritzker	This item is required. This is the CMO's last name. While all the name fields are desired, the Prefix, First name, Middle name and Suffix fields can be left blank. Last Name is the only required name field. TBDs are not allowed because committees cannot exist without an agency CMO.
Committee Management Officer Suffix:		This item is not required. This is a qualifier to a CMO's name, i.e., Jr. or III, or a degree, i.e., PhD, EdD.
Committee Management Officer Phone:	(202) 480-2093	This item is required. Any format may be used
Committee Management Officer Fax:	202-386-7190	This item is required. Any format may be used
Committee Management Officer Email:	dpritzker@acus.gov	This item is required.



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