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July 5, 2011

By Email; Original by Mail

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*NOT ADMITTED IN D.C.

William E. Bordley
Associate General Counsel
United States Marshals Service
Department of Justice
CS-3, 12th Floor
Washington, D.C. 20530-1000
USMS.FOIA@doj.gov

Re: Freedom of Information Act Request

Dear Mr. Bordley:

This letter is a request under the Freedom of Information Act, 5 U.S.C. §552 *et seq.*, on behalf of our client, Common Cause, a non-profit, non-partisan public interest organization which works on issues of government accountability, ethics in government and open government.

The request seeks all records of the U.S. Marshals Service relating to protection provided by the agency to Justice Clarence Thomas during by the Justice outside the Washington, D.C. area on the following dates (hereafter referred to as “the travel dates”):

- (i) December 21-22, 2007
- (ii) March 11-12, 2008
- (iii) commencing on April 17, 2008
- (iv) commencing on September 30, 2009
- (v) January 4-5, 2010
- (vi) commencing on September 26, 2010
- (vii) October 22-23, 2010

Request

Pursuant to FOIA, we request access to, or copies of, the following documents in the possession or custody of the U.S. Marshals Service. (The term “document” includes emails, electronic records, correspondence, typed or handwritten notes, memoranda, reports, or any other records):

1. All documents, including correspondence, memoranda, expense reports or other records, relating to travel by any agent or employee of the U.S. Marshals Service with Justice Thomas on the travel dates. This request includes the forms entitled “Request for Special Assignments Resources” or similar forms or documents maintained by the agency. It also includes any internal memoranda assigning agency personnel to such trips.

2. All documents, including correspondence, memoranda, emails, or other records received from any source, requesting protection by the U.S. Marshals Service for travel by Justice Thomas on the travel dates.

3. All documents, including correspondence, memoranda, emails or other records, that contain information relating to the itinerary of any travel by Justice Thomas on the travel dates, including the cities traveled to, local destinations (including locations of meetings, conferences or meals), and places of accommodation.

4. All documents, including correspondence, memoranda, emails or other records, from the U.S. Marshals Service to any federal, state or local law enforcement agency relating to travel by Justice Thomas on the travel dates, or relating to travel by employees or agents of the Marshals Service with Justice Thomas on the travel dates.

Fee Waiver

Pursuant to 5 U.S.C. § 552(a)(4)(a)(iii) and 28 C.F.R. § 16.11(k), Common Cause requests a waiver of all applicable fees. Disclosure of the information requested here “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government,” and “is not primarily in the commercial interests of the requester.” 16 C.F.R. § 16.11(k)(1)(i),(ii).

There is a high level of public interest in activities of Justices of the Supreme Court, including their extra-judicial activities, and this is a subject that is often the focus of media attention. *See, e.g.* M. McIntire, “Friendship of Justice and Magnate Puts Ethics in Focus,” *The New York Times* (June 18, 2011). The documents requested here relate directly to “operations or activities” of government officials, *id.* at (2)(i), and the release of such documents is highly likely to contribute to “an increased public understanding of those operations or activities.” *Id.* at (2)(ii).

As the recent story in the *New York Times*, cited above, amply demonstrates, the issue of travel by Justices is, in particular, a matter of keen public attention. The *Times* story quotes a representative of Common Cause on matters of judicial ethics. Common Cause has a long history as a leading national watchdog organization on issues of government ethics and

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accountability, including such questions as they relate to the Judiciary. Plainly, Common Cause possesses “expertise in the subject area and ability and intention to effectively convey information to the public. . . .” *Id.* at (2)(iii). Finally, the production of additional government documents on this subject will “contribute ‘significantly’ to public understanding” of the operations of government and the extra-judicial activities of Justices. *Id.* at (2)(iv).

Common Cause is a non-profit organization and has no “commercial interest” in disclosure of the documents requested herein. 28 C.F.R. § 16.11(k)(3).

For the above reasons, all fees applicable to this request should be waived.

Request for Expedition

Pursuant to 28 C.F.R. § 16.5(d), Common Cause requests expedited treatment for this request. As demonstrated above, this request relates directly to “a matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” *Id.* at (d)(1)(iv). Attached to this letter is a certification in support of the request for expedited treatment.

Thank you for your consideration of this request. If you have any questions, please feel free to contact me. If the request is denied in whole or in part, please provide a detailed justification by reference to specific exemptions in the Act for any documents within the scope of the request that you withhold or redact. Please release all segregable portions of otherwise exempt material.

Pursuant to the applicable FOIA provision and Department regulations, I look forward to a response regarding our request for expedited processing within the ten (10) day statutory time limit. 28 C.F.R. § 16.5(d)(4).

Sincerely,



Donald J. Simon

DJS:skk

Copy to:

Nancy Robinson (Nancy.Robinson@usdoj.gov)

Director of Public Affairs (By Mail)

Department of Justice

Room 1128

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Washington, DC 20530-0001

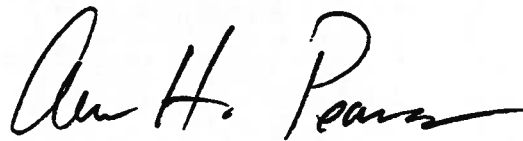
CERTIFICATION

Pursuant to 28 C.F.R. § 16.5(d)(3), I certify that the attached FOIA request made on behalf of Common Cause seeks documents relating to a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence in government. 28 C.F.R. § 16.5(d)(1)(iv).

The request seeks documents relating to protection provided by the U.S. Marshals service with regard to travel by a Justice of the Supreme Court. The requested documents will shed public light on travel by the Justice and on his extra-judicial activities. The extra-judicial activities of Supreme Court Justices have been a topic of heightened public and press attention and editorial comment over the last year. *See, e.g.*, M. McIntire, "Friendship of Justice and Magnate Puts Ethics in Focus," *The New York Times* (June 18, 2011); Editorial, "Cloud Over the Court," *The New York Times* (June 22, 2011); E. Lichtblau, "Common Cause Asks Court About Thomas Speech," *The New York Times* (Feb. 14, 2011); Editorial, "Politics and the Court," *The New York Times* (Feb. 4, 2011); E. Lichtblau, "Thomas Cites Failure to Disclose Wife's Job," *The New York Times* (Jan. 24, 2011); Editorial, "Justice Thomas and His Wife," *The New York Times* (Oct. 12, 2010). The issues that are raised by this topic in turn relate directly to questions of judicial ethics, conflicts of interest, recusal requirements and compliance with federal financial disclosure laws. These questions, in turn, relate directly to public confidence in the Supreme Court and in the Judiciary as a whole.

For the foregoing reasons, the attached FOIA request satisfies the applicable criteria and should be afforded expedited treatment.

I certify this statement to be true and correct to the best of my knowledge and belief.



Arn Pearson
Vice President for Program Operations
Common Cause

Date: July 5, 2011