

JUL 12 1993



MEMORANDUM FOR: John Edgell
Confidential Assistant
Economic Development Administration

FROM: Gordon B. Fields *GBF*
Chief, General Law Division

SUBJECT: Task Force on National Health Care Reform

Attached is a letter from the Department of Justice attorney who is handling litigation challenging the President's Task Force on National Health Care Reform. There is a degree of ambiguity in the letter resulting from the absence of a request as yet from the White House Office of Records Management (ORM) for the delivery of Task Force and working group documents to ORM. I have clarified that Justice wishes this process to begin and be completed as quickly as possible without waiting for the ORM request.

In my memorandum of June 23, 1993, to you and other Department working group members (attached), I asked that members review their files to be in a position to respond promptly to a request for return of the documents. You should treat this as that request.

The Justice letter outlines a number of steps to be taken in this process, which I have reordered as follows. There are four actions to be taken: (1) transferring, (2) boxing, (3) centralizing, and (4) delivering. Any computerized records should be transferred to discs. (However, do not delete any such records from hard drive until further instructions are received.) Those discs and all hard copy records should be boxed by each working group member. All boxes should be centralized with you. As you receive them, those boxes should be delivered to ORM. This process should be initiated and completed as quickly as possible.

There are a number of ancillary steps as well. (1) Each working group member should prepare a Memorandum for the Record describing how he or she maintained the records segregated from agency documents. These memoranda should be retained by the members, but copies should be provided to you (for transmittal to me) and to Terry Good at ORM (Room 80, Old Executive Office Building, 456-2240). (2) In preparing the records for boxing, each member should prepare a brief inventory of the contents of the boxes. The inventories should include a statement that the records are the property of the White House; that the Department has determined-- as we did in response to the Freedom of

Information Act request we received-- that the records remained in the control of the White House while in the possession of the working group member; and that the records are being returned at the request of the White House following consultation with the Department of Justice. As with the case of the memoranda for the record, these inventories should be retained by the members, with copies for me (through you) and for Terry Good at ORM. (3) Each member should clearly mark each box with his or her name and the Department of Commerce.

Please provide copies of this memorandum to all Department working group members for their guidance: Solomona Aelua, Laurence Campbell, Paul Campbell, Carolyn Gatz, Patricia Johnson, David Kass, Nampeo McKenney, Jane Molloy, Charles Nelson, Simone Rueschemeyer, Jonathan Silver, Dennis Steinauer, Cynthia Taueber, and Susannah Wellford. However, the attached Justice Department letter may be provided to Mr. Silver, but should not otherwise be distributed to the others, in order to help preserve any privilege that may attach to that letter. You or any other member may call me at 482-5384 if there are any questions.

Attachments

cc: Jeff Gutman, DoJ



U.S. Department of Justice

Civil Division.

EAP:JGutman
145-1-1333Telephone:
(202) 514-4775MEMORANDUM

Washington, D.C. 20530

To: Peggy Irving (DoJ)
 John Casciotti (DoD)
 Roland Halstead (VA)
 Steve Aitken (OMB)
 Dick Galgay (Labor)
 Nicole Jenkins, Peter Bieger (Treasury)
 Eileen Bradley, Richard Friedman (HHS)
 Gordon Fields (Commerce)
 Keith Golden (FTC)
 Stephanie Peters (OPM)

CONFIDENTIAL ATTORNEY-
CLIENT COMMUNICATION

From: Jeff Gutman

Re: AAPS v. Clinton, No. 93-399 (D.D.C.) and agency FOIA
requests

Date: July 9, 1993

Several of you have asked about whether Task Force and working group documents that are regarded as responsive or could later be determined to be responsive to outstanding FOIA requests should be transferred to the White House Office of Records Management ("ORM") for storage. I earlier advised you that the White House would be sending a letter to working group members requesting transfer of those documents not already sent to the ORM. When I receive a copy of that letter, I will fax it to you.

Based on my conversations with most of you, it appears that the vast majority of the documents found in your searches were determined not to be agency records. They were segregated from agency records and remained under the control of the White House. In view of the preservation requirements of the Presidential Records Act and the Court's June 15 Order, we believe it best that these documents be housed in one secure location rather than be scattered in many offices and that the process of delivering the documents to the ORM begin quickly. The process by which you or your FOIA staff assist your working group members in boxing and transferring their records can, at the same time, be used as the method for completing your searches, identifying responsive documents and determining which are agency vs. White House Office records.

To enhance our litigation position should a requestor file suit, we offer a number of suggestions. First, your Task Force and working group members should write memos while boxing up documents or transferring documents onto computer discs that explain how the records were segregated from agency documents.

Those memos should be copied and retained by the working group member, you or your FOIA officer and forwarded to Terry Good. They can serve as the basis for future declarations that provide factual support for the legal argument that the documents were not agency records. Without this support, it will be more difficult for us to argue that the documents were segregated and thus not agency records.

Second, your Task Force or working group member should write a brief inventory of the contents of the boxes. In the absence of the documents themselves, that inventory will serve as a record that your agency had temporary possession of these records. The inventory should include a statement that the records are Task Force/working group records that are property of the White House Office; that the agency has determined that documents remained in the control of the White House Office while in the agency's possession and that the documents are being returned at the request of the White House and following consultation with us. Retain these inventories and forward a copy to Terry Good like the memos discussed above.

Third, the boxes sent to ORM must be clearly marked with names of the agency and employee for retrieval if necessary.

Fourth, if you identify working group-related documents that are responsive to a request, but may be agency records because they were either integrated into your agency's system of records or are, for example, memos between agency employees written in their capacities as agency employees rather than working group members, copy those documents for further review. We can discuss whether the record should be released to the requestor.

On a related subject, I have been asked whether it is acceptable for working group members to delete documents from their hard drive after copying the document on a disc that will be sent to ORM. That is a tricky question and one to which I do not yet have a definitive answer. In the interim, the safer view is not to delete any computer records. When discs are sent to ORM, make sure that any visible labels or inventories say that discs are included. ORM may preserve discs in a manner different from paper records.

If you have any questions, please call me at 202-514-4775.

JUN 23 1993



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D C 20230

MEMORANDUM FOR: John Edgell
Confidential Assistant
Economic Development Administration

FROM: Gordon B. Fields *GBF*
Chief, General Law Division

SUBJECT: President's Task Force on National Health
Care Reform

On June 15, 1993, U.S. District Judge Royce C. Lamberth entered an Order that directs, among other matters, that the records of the interdepartmental working group of the President's Task Force on National Health Care Reform are to be preserved and not destroyed. Although this is consistent with instructions working group members have previously received, Department of Commerce members should be aware that those obligations are now subject to a court order.

We are advised that the White House will shortly instruct working group members to return all such records to the White House Office of Records Management. Members should review their files so that they will be in a position to respond to that instruction promptly.

In accordance with our conversation, we would appreciate it if you, as the Department's liaison to the Task Force, would distribute copies of this memorandum to all Department working group members: Solomona Aoelua, Laurence Campbell, Paul Campbell, Carolyn Gatz, Patricia Johnson, David Kass, Nampeo McKenney, Jane Molloy, Charles Nelson, Simone Rueschemeyer, Jonathan Silver, Dennis Steinauer, Cynthia Tauer, and Susannah Wellford.

cc: Jeff Gutman, DoJ