

December 10, 2004

Bethesda, MD 20817

Executive Director for the Office of Public Disclosure
Attn: Freedom of Information Appeal
Social Security Administration
6401 Security Boulevard
Baltimore, Maryland 21235

RE: S9H: PD0055

Greetings:

On October 11, 2004, pursuant to the Freedom of Information Act, as implemented by the Social Security Administration under 20 C.F.R. 402, I requested:

"Any reports of investigations, technical analysis, or management response by SSA to the following discrimination complaints filed by myself with the SSA Office of General Counsel (OGC) during January to May 2004 regarding the operation of the Texas Rehabilitation Commission (TRC) Disability Determination Services (DDS) and SSA Region VI over the past two decades:

1. 1/28/2004: Ex relatori "Lawrence L. Doe" ("TX: Oil Well Firefighter Case")...
2. 1/29/2004: Ex relatori "Lawrence L. Doe" ("TX: Fake Examiner Case")...
3. 1/30/2004: Ex relatori "Lawrence L. Doe" ("TX: Vocational Evaluation Case")...
4. 2/5/2004: Ex relatori "Lawrence L. Doe" ("TX: Psychiatric Disability Case")...
5. 3/31/2004: Ex relatori "Lawrence L. Doe" ("TX: SAMC Piece Work Case")...
6. 4/23/2004: Ex relatori "Lawrence L. Doe" ("U.S.: Former U.S. DOE Workers Case")...
7. 5/11/2004: ("TX: North Dallas OHA ALJ Case")...

In response Freedom of Information Officer Jonathan R. Cantor stated that there were responsive documents which had been identified, but those documents were in draft form and thus presently exempted from disclosure under the deliberative exception of the Freedom of Information Act, 5 U.S.C. 552(b)(5). Officer Cantor further stated that "The general purpose of this privilege is to prevent injury to the quality of agency decisions and to protect the decision-making processes of government agencies."

However, as an individual with a medical disability who is currently prosecuting a SSDI claim against the Commissioner, Social Security (COSS) in Federal District Court, alleging remand or reversal of my 2000 SSDI claim and reopening of my 1988 claim, the information that is currently being withheld from disclosure may affect my ability to prosecute my claim against the Commissioner, in a case in which I was ordered to file a Motion for Summary Judgment

on November 29, 2004, shortly after the denial notice sent by Officer Cantor. Timeliness is thus an issue in the protection of my rights.

My ability First Amendment right "to petition the Government for a redress of grievances" may thus be compromised if this categoric denial of responsive information impairs my ability to prosecute my claim. If the Social Security Administration makes policy changes based on my complaints, these changes may not apply to me as a result of the prior adjudication of my SSDI claim in Federal District Court Res Judicata, and thus I would be denied recourse for unjust policies whose equity I had raised as an issue, due to SSA's delay in action and/or disclosure.

In fact, on November 9, 2004, the day before Officer Cantor's denial response, the SSA Office of General Counsel sent me a letter regarding my early 2004 discrimination complaints (Docket #HQ-04-07) under the name of Michael G. Gallagher, Associate General Counsel for General Law (signed by Alan S. Frank), which indicated that SSA has "determined that SSA did not discriminate against you".

The response of the SSA OGC under the name of AGC Gallagher was substantially nonresponsive to my 7 complaints. In the OGC letter, several arguments were used in response, many repeatedly. These were:

1. SSA alleges that >>I<< had not been discriminated against: However, six of the seven discrimination complaints were filed Ex Relatori, meaning that I never alleged that I was discriminated against, even if I was. That tens of thousands of individuals have been discriminated against should require a means to recourse for all, including myself. The argument that I had not been discriminated against is thus specious.(See item 6.)

2. SSA alleges that SSA has no jurisdiction over the actions of the Texas Disability Determination Services. However, COSS has delegated the determination of disability in Texas to the Texas DDS in accordance with 42 U.S.C. 421(a)1, so that the Texas DDS is SSA's subcontractor and agent within Texas; and COSS has the right to terminate that agreement under 42 U.S.C. 421(b). As such, SSA has a legal obligation to manage its contractors and agents in such a manner so as to ensure compliance with the Social Security Act, SSA national program standards, and claimant's U.S. Constitutional rights. As a result, SSA is thus responsible for the management of the Texas DDS, Respondiat Superior, 42 U.S.C. 1985 Action for Neglect to Prevent. SSA thus has a legal, in addition to a moral, obligation to ensure the protection of U.S. Constitutional rights to due process and equal protection of the laws among all of its Social Security disability claimants nationwide, both in State Agency determinations and in its own programs. SSA's allegation of no jurisdiction over the Texas DDS for discriminatory actions committed by them is thus specious.(See items 1, 2, 3, 5, 6)

3. SSA alleges that SSA does not have subject matter jurisdiction to investigate discrimination on the basis of:

- a) "Fraud" (namely the use of "fake examiners" (document fraud) and "waiting list" (two tier) unequal treatment processing without transparency or accountability, as was demonstrated in the Houston Chronicle article of September 9, 2001, and as sanctioned as purportedly not being in violation of SSA policy on September 20, 2001 by SSA Region VI Regional Commissioner Horace L. Dickerson, Jr. speaking to the TRC Board.(item 2)
- b) claim size (namely, the compensation of SAMC's and SAPC's on a piece-work basis since 1997, which has been \$13 per claim or task in recent years, some of whom make well over a hundred thousand dollars per year at this rate).(item 3)
- c) industry, treatment provider, or socio-economic background (e.g. the bias against "blue collar" workers occupational injured in the "oil industry" cited by SSA Region VI Regional Communications Director Wesley Davis as quoted in the Houston Chronicle in March 2001 in explaining why the Texas DDS had the lowest 'initial approval rate' in the nation in 2000, and a 1996 internal memo by the Chief or Emeritus SAMC of the Texas DDS referring to certain physicians in a manner reminiscent of "red-lining".(item 4)

(Notably, SSA cannot investigate discrimination on the basis of race, because they do not maintain race information on claimants.)

This raises the question as to what jurisdiction the SSA Office of General Counsel has to investigate discriminatory policies on these basies at SSA and its contractors and agents, and raises the question that, if the SSA OGC does not have the necessary authority, then who does?

4. SSA alleges that SSA does not have subject matter jurisdiction to investigate discrimination complaints collateral to my personal disability claim. This argument, however, is also specious.

a) With respect to the North Dallas OHA ALJ claim, it is directly relevant to my personal claim, but the allegations made therein consider issues far beyond my individual claim. These include the fact that hundreds of pages of my personal medical records were culled out of my claim file somewhere between the Texas DDS and the North Dallas Office of Hearings and Appeals—a violation of due process, that my claim was "fly specked" by the ALJ—an abuse of process, and that certain "code words" are commonly used at the North Dallas OHA to reject claims for certain medical diagnoses and records from certain treatment providers. These allegations are not simple matters of a difference of opinion regarding whether a claimant (myself) is disabled, but reflect on the general policies operant at the North Dallas OHA.

b) With respect to the allegation of discrimination against former U.S. Department of Energy (DOE) nuclear fuels and weapons laboratory workers, the U.S. DOE Energy Employee Occupational Injury Compensation Program (EEOICP) Title D and Title E programs have about 25,000 workers who claim to have bee occupationally injured in U.S. DOE nuclear facilities, and are thus seeking workers' compensation assistance. Because those who have been injured by radiation, nuclear fuel, chemical, and solvent

exposure, exotic toxics which are not normally encountered in American society, where medical evidence of disability is hard to unequivocally demonstrate, former U.S. DOE nuclear fuels and weapons laboratory workers are likely to be discriminated against by SSA disability determinations. This is particularly a problem in Texas where the Texas DDS SAMC's and some SSA ALJ's have used a non-statutory definition of disability which adds the restrictive term "objective" to the statutory definition of disability under the Social Security Act.

In summary, the response by SSA Freedom of Information Officer Jonathan R. Cantor dated November 10, 2004 invoking the deliberative exemption under 5 U.S.C. 552(b)(5) in denying me access to information about SSA's response to my discrimination complaints may violate my First Amendment right "to petition the Government for a redress of grievances" in the prosecution of my Social Security disability claim against COSS in Federal District Court.

I therefore request a prompt review of this matter. / -

Sincerely Yours,



SOCIAL SECURITY

Refer to:
S9H: PD0055

November 10, 2004

Bethesda, MD 20817

Dear

This is to acknowledge receipt of your letter dated October 11, 2004 requesting a copy of any reports of investigations, technical analysis, or management response by the Social Security Administration (SSA) in response to discrimination complaints filed by you, with the Office of the General Counsel, regarding the operation of the Texas Disability Determination Service (DDS), Department of Assistive and Rehabilitative Services (DARS).

We have identified documents responsive to your requests; however, they currently exist in draft format and cannot be disclosed. These documents are exempt from the disclosure requirements of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(5). This exemption includes the deliberative process privilege; that is, it protects advice, opinions, recommendations, pre-decisional discussion, and evaluative remarks that are part of the government decision-making process. Release of such pre-decisional advisory communications would harm the quality of agency decision-making and the policy of encouraging frank, open discussion among agency personnel before making a final decision.

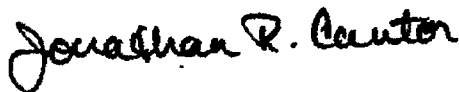
The general purpose of this privilege is to prevent injury to the quality of agency decisions and to protect the decision-making processes of government agencies. The purpose of the deliberative process privilege is to allow agencies to freely explore alternative avenues of action and to engage in internal debates without fear of public scrutiny. (Missouri ex rel. Shorr v. United States Army Corps of Engineers, 147 F.3d 708, 710 (8th Cir. 1998)). Exemption 5 protects not merely documents, but also the integrity of the deliberative process itself where the exposure of that process could result in harm.

Please be assured that a final response will be sent to you as soon as possible.

If you disagree with this decision, you may request a review. Mail your appeal within 30 days after you receive this letter to the Executive Director for the Office of Public Disclosure, Social

Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. Mark the envelope "Freedom of Information Appeal."

Sincerely,

A handwritten signature in black ink that reads "Jonathan R. Cantor". The signature is written in a cursive style with a large initial 'J'.

Jonathan R. Cantor
Freedom of Information Officer