



UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE GENERAL COUNSEL

February 11, 2022

VIA EMAIL

Mr. David Boundy
Cambridge Technology, Law LLC
P.O. Box 590638
Newton, MA 02459
DBoundy@cambridgetechlaw.com

RE: *Freedom of Information Act (FOIA) Request No. F-22-00062*

Dear Mr. Boundy:

As a result of appeal A-22-00005, the United States Patent and Trademark Office (USPTO) FOIA Office reopened your request as F-22-00062, on January 21, 2022, wherein you requested a copy of the following documents pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. § 552:

Request all documents issued since, or in effect at any time since, the America Invents Act in September 2011 that purport to govern or recommend either form of signature, title of a signatory, or establishing authority of a natural person signatory to act on behalf of an applicant or assignee, for signatories who are not registered attorneys or agents. This request covers internal and external documents authored by the PTO or PTO personnel.

Excluded from this request are the text of the relevant regulations, 37 CFR § 1.4, § 1.32(b)(4), § 3.71, and § 3.73, but guidance, memoranda, instructions, or other documents (internal or external) that purports to elaborate on, or guide application of, regulation would be responsive.

On December 9, 2021, you clarified the general scope of your request as follows:

1. Documents that govern or recommend requirements for signatures, when the signatory is not an attorney/agent registered before the Office. (For anyone with a registration number, the inclusion of that registration number in a signature block solves all the problems that arise with other signatories.)

2. The request covers signatures on any document that is typically signed by someone other than a registered attorney. Examples include powers of attorney, assignments, declarations, and § 3.73 statements.

Also seeking the most updated version of a guidance document, Apparent Authority

Guidance for POA, and/or any other guidance on signatory titles for power of attorney designations.

The USPTO has identified 9 pages of documents that are responsive to your request and are releasable. Portions of this document production however, have been redacted pursuant to Exemption (b)(5) of the FOIA.

Exemption (b)(5) of the FOIA, 5 U.S.C. 552(b)(5), protects an agency's deliberative process privilege. Mapother v. Dep't of Justice, 3 F.3d 1533, 1537 (D.C. Cir. 1993). This privilege applies to documents, which reflect "advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975), quoting Carl Zeiss Stiftung & Co. v. V.E.B. Carl Zeiss, Jena, 40 F.R.D. 318, 324 (D.D.C. 1966).

Here, the withheld information consists of opinions and recommendations regarding proposed agency actions, i.e., antecedent to the adoption of an agency position (Judicial Watch, Inc. v. U.S. Dep't of Commerce, 337 F.Supp.2d 146, 172 (D.D.C. 2004)), and are deliberative, i.e., a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters. Skinner v. U.S. Dep't of Justice, 2010 WL 3832602 (D.D.C. 2010) (quoting Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975)). Facts expressed in these deliberative communications are not reasonably segregable, and thus are not suitable for disclosure.

Pre-decisional, deliberative documents or comments "are at the heart of Exemption (b)(5), and sanctioning release of such material would almost certainly have a *chilling effect* on candid expression of views by subordinates [within an agency]." Schell v. Dep't of HHS, 843 F.2d 933, 942 (6th Cir. 1988) (emphasis added). In particular, disclosure of documents or comments reflecting the positions discussed, but not ultimately adopted as agency decisions are deliberative, and thus exempt from disclosure. Arthur Andersen & Co. v. Internal Revenue Service, 679 F.2d 254, 258 (D.C. Cir. 1982).

You have the right to appeal this decision to the Deputy General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. An appeal must be received within 90 calendar days from the date of this letter. See 37 C.F.R. § 102.10(a). The appeal must be in writing. You must include a copy of your original request, any amendments or clarifications, this letter, and a statement of the reasons why the information should be made available and why this denial is in error. Both the letter and the envelope must be clearly marked "Freedom of Information Appeal."

Sincerely,

Dorothy G. Campbell
Dorothy G. Campbell
USPTO FOIA Officer
Office of General Law

