



UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE GENERAL COUNSEL

November 4, 2019

VIA EMAIL

Mr. Randy Landreneau
U.S. Inventor
17440 Dallas Parkway
Dallas, TX 75287

RE: ***Freedom of Information Act (FOIA) Request No. F-19-00277***

Dear Mr. Landreneau:

The United States Patent and Trademark Office (USPTO) FOIA Office has received your e-mail dated September 16, 2019 requesting a copy of the following documents pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. § 552:

1. Copies of the PAP's for each PTAB APJ employment grade for fiscal years 2013, 2016, and 2019.
2. Copies of all documents and guidance documents concerning APJ production expectancies, work product quotas, or docket management goals for all PTAB APJ employment grades in effect as of this request.
3. Copies of any and all employment agreements (collective bargaining or group contracts) between the government and any organization, union, or association representing PTAB APJ's. This request is limited to such agreements and any amendments and attachments thereto that are in force as of this request.
4. Copies of all BPAI's or PTAB's Standard Operating Procedures (SOP) 1, 5, 6, 7, 8, and 9 in effect in 2011, 2014, and 2019.

The USPTO has identified 95 pages of documents that are responsive to your request. A copy of the material is enclosed. Items 1 and 4 are released in full. Please note that SOP's 5 and 6 are not in use at this time nor were they in use in 2011 or 2014. Regarding Item 3, there are no records responsive to this request. PTAB APJ's are not unionized. Documents responsive to Item 2 of the request are withheld in full pursuant to Exemption (b)(2) of the FOIA.

Exemption 2 protects information related solely to the internal personnel rules and practices of an agency. 5 U.S.C. § (b)(2). For this exemption to be applicable, a three-part test must be satisfied. The information must be: (1) related to personnel rules and practices, (2) related solely to those personnel rules and practices, and (3) for an agency's internal use. See Milner v. Dep't of the Navy, 562 U.S. 562 (2011).

In Milner, the Court found that the word "personnel" was used in the exemption to "refer [] to human resources matters," and in common parlance to refer to "the selection, placement, and training of employees and . . . the formulation of policies, procedures, and relations with [or involving] employees or their representatives." Id. at 569. (quoting Webster's Third New International Dictionary 1687 (1966)). The Court concluded that "[a]n agency's 'personnel rules and practices' are its rules and practices dealing with employee relations or human resources," noting that "all the rules and practices referenced in [Exemption (b)(2)] share a critical feature: they concern the conditions of employment in federal agencies—such matters as hiring and firing, work rules and discipline, compensation and benefits." Id. at 571.

The information you requested contains methods to "evaluat[e] [employees'] work performance" and concerns "the selection, placement, and training of employees" and "employee relations or human resources," including "such matters as hiring and firing, work rules and discipline, compensation and benefits." Id. at 569-70. The information relates to hiring, firing, discipline, compensation, benefits, and the like, given their obvious use as a tool to evaluate the job performance of individual employees. The forms relate to "[p]ersonnel management," which the Supreme

Court defined as “the phase of management concerned with the engagement and effective utilization of manpower to obtain optimum efficiency of human resources.” Id. at 569.

The information you requested is used to determine employee ratings, performance appraisals (including information related to evaluating performance, taking a performance-based action, or justification for a performance-based merit award or promotion) and used for other personnel-related actions at the USPTO. Because the information requested is (1) related to personnel rules and practices, (2) related solely to those personnel rules and practices, and (3) for the agency’s internal use, the information is exempt from disclosure under Exemption 2.

You have the right to appeal this initial 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, this letter, and a statement of the reasons why the information should be made available and why this initial denial is in error. Both the letter and the envelope must be clearly marked “Freedom of Information Appeal.”

You may contact the FOIA Public Liaison at 571-272-9585 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Dorothy G. Campbell
USPTO FOIA Officer
Office of General Law

Enclosure