

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ROBERT F. KENNEDY MEMORIAL )  
CENTER FOR HUMAN RIGHTS, )  
1367 Connecticut Avenue, NW )  
Suite 200 )  
Washington, DC 20036 )

Plaintiff, )

v. )

UNITED STATES DEPARTMENT )  
OF THE TREASURY, )  
1500 Pennsylvania Avenue, NW )  
Room 1054 )  
Washington, DC 20220 )

Defendant. )

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR  
INJUNCTIVE RELIEF**

**COMPLAINT FOR INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiff seeks injunctive and other appropriate relief for the processing and release of agency records requested by plaintiff from the Department of Treasury.

**Jurisdiction and Venue**

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

### **Parties**

3. Plaintiff Center for Human Rights at the Robert F. Kennedy Memorial (the "Center") is a public interest organization. The Robert F. Kennedy Memorial is incorporated as a not-for-profit corporation in Washington, D.C. The purpose of the Center is to promote human rights. Its activities include the collection, analysis, and dissemination of information to the public regarding the nature and effectiveness of domestic and international programs intended to assist the Haitian people.

4. Defendant United States Department of the Treasury (the "DOT") is a Department of the Executive Branch of the United States Government. DOT is an "agency" within the meaning of 5 U.S.C. § 552(f).

### **The Cancellation of IDB Loans to Haiti**

5. In July 1998, the Inter-American Development Bank (the "IDB") approved \$145.9 million in loans to Haiti (the "IDB Loans"). The money was intended to finance four separate social sector projects in Haiti. These projects were aimed at improving water, sanitation, health, rural roads and education in Haiti. Payment was programmed to begin in early 2001 after the Haitian Parliament ratified the agreements related to the four IDB loans and paid accumulated arrears. These were the sole remaining conditions required for disbursement.

6. Although the Haitian Government complied with the conditions that had been established by the IDB in December 2000, the IDB failed to fulfill the terms of the loan agreement and did not disperse the IDB Loans.

7. The Center has been investigating the involvement of DOT officials in the decision to withhold the IDB Loans. Pursuant to this investigation, the Center has requested that DOT produce information regarding communications between the DOT and the IDB and other branches of the U.S. government regarding the IDB Loans to Haiti.

#### **Plaintiff's FOIA Requests**

8. By facsimile and letter dated August 28, 2003, to Alana Johnson, Disclosure Officer at the DOT, Monika Kalra Varma, Program Director at the Center, requested under the FOIA certain agency records regarding loans approved by the Inter-American Development Bank to Haiti in July 1998. The FOIA request specifically noted that the Center would like to have the documents as soon as possible and that DOT should forward a partial production of documents as they became available, rather than wait until the search is complete.

9. By facsimile and letter dated September 24, 2003, to Alana Johnson, Disclosure Officer at the DOT, Monika Kalra Varma, Program Director at the Center amended her request under the FOIA for certain agency records (the "Amended FOIA Request"). Again, the FOIA request specifically noted that the Center would like to have the documents as soon as possible and that DOT should forward a partial production of documents as they became available, rather than wait until the search is complete. The Center stated in its amended request that the records it sought included:

- a. Copies of the 1998 signed loan agreements between the Haitian Government and the IDB.
- b. Copies of the 1998 loan documents as ratified by the Haitian Government in December 2000.
- c. Memoranda, emails, meeting minutes and any other records and documents specifying the location of specific Unités Communales de Santé [Community Health Unions] and pre-Unités Communales de Santé [pre-Community Health Unions] within the North, Northwest, Artibonite, and Centre departments of Haiti.
- d. Memoranda, emails, meeting minutes and any other records and documents showing debate or discussion about the location of the Unités Communales de Santé.
- f. Memoranda, emails, meeting minutes and any other records and documents stating which medicines are considered “essential medicines” as discussed in the health loan agreement. This should include any memoranda, emails, meeting minutes and any other records and documents that make reference to Annex I (HA-0045) to the Simplified Procedure Proposal for a loan for reorganization of the national health care system, Phase I (PR-2308).

g. Memoranda, emails meeting minutes and any other records and documents relating to and including the technical files or implementation plans of the health loans to Haiti. This should include the following documents and references:

- 1) Regarding and including information about the content and format of Unités Communales de Santé plans regarding the proposed population covered, services provided, etc. This should include any memoranda, emails, meeting minutes and any other records and documents that mention Section 3.18 of the Simplified Procedure Proposal for a loan for reorganization of the national health system, Phase I (PR-2308).
- 2) Memoranda, emails, meeting minutes and any other records and documents from the technical files regarding and including the Institutional Evaluation of the Ministère de Santé Publique et de la Population [Public Health and Population Ministry] and the Training Needs Study, mentioned in Section 3.27 of the Simplified Procedure Proposal for a loan for reorganization of the national health system, Phase I (PR-2308).
- 3) Memoranda, emails, meeting minutes and any other records and documents from the technical files regarding and including the document entitled “Implantation des Unités Communales

de Santé: Plan Strategique” [Implementation of the Community Health Unions Strategic Plan].

- 4) Memoranda, emails, meeting minutes and any other records and documents from the technical files regarding and including the “Etude sur l’Organisation et la Prestation de Soins” [Study of the Organization and Provision of Care].
  - 5) Memoranda, emails, meeting minutes and any other records and documents from the technical files pertaining to and including the Economic and Financial Analysis report.
  - 6) Memoranda, emails, meeting minutes and any other records and documents regarding and including the studies mentioned in the Simplified Procedure Proposal for a loan for reorganization of the national health system, Phase I (PR-2308), “Background Study on Decentralization,” and “Unités Communales de Santé Consensus Workshop (December 1996).”
- h. Memoranda, emails, meeting minutes and any other records and documents regarding and including a letter to the Inter-American Development Bank specifying the date of effectiveness of the loan contract, mentioned in Section 6.01(a) of the loan contract (No. 1009/SF-HA).

i. Memoranda, emails, meeting minutes and any other records and documents from the technical files and implementation files for the water and sanitation loans to Haiti. This should include the following references and documents:

- 1) Memoranda, emails, meeting minutes and any other records and documents prepared by the IDB project team, including PRE/1: Summary Port-de-Paix project feasibility document; PRE/2: Summary Les Cayes project feasibility document; EXE/1: Lease contract for Port-au-Prince and other large urban systems; EXE/3: Program's operating regulations (and the English abstract thereof).
- 2) Memoranda, emails, meeting minutes and any other records and documents prepared by the IDB project team and sector reform unit regarding and including NORPLAN, 1997: Les Cayes potable water and sanitation master-plan and feasibility report.
- 3) Memoranda, emails, meeting minutes and any other records and documents regarding and including TESCULT, 1997: Port-de-Paix potable water and sanitation master-plan feasibility report.

- 4) Memoranda, emails, meeting minutes and any other records and documents regarding and including Environmental and Social Impact Analysis of the Proposed Inter-American Development Bank potable water and sanitation sector reform and investment program.
- 5) Memoranda, emails, meeting minutes and any other records and documents regarding and including SOPRIN, 1996: Willingness of the Cap-Haïtien population to pay for improved potable water services.
- 6) Memoranda, emails, meeting minutes and any other records and documents regarding and including Paola Agostini's documents for the World Bank entitled "Willingness of the Port-au-Prince population to pay for improved potable water services" (195).
- 7) Memoranda, emails, meeting minutes and any other records and documents regarding and including files or reports drafted by the Sector Reform Unit. These are mentioned in the Simplified Procedure Proposal for a Loan for a Potable Water and Sanitation Sector Reform and Investment Project (PR-2309), specifically including the Study for Private Section Participation and any information about the third unnamed city which was the site of a pilot program.

j. Memoranda, emails, meeting minutes and any other records and documents regarding and including the Government of Haiti's Draft Sector Reform Law and any information or correspondence as to whether that proposed legislation has been passed, any proposed changes, and/or any existing contingency plan in case the law did not pass.

10. By facsimile and letter dated February 5, 2004, to Alana Johnson, Disclosure Officer at the DOT, the Center requested a status update on the original and amended FOIA requests, requesting that DOT provide any information available or an estimated timeline for the receipt of the requested documents. Copies of both the original and amended FOIA requests were included with this facsimile.

11. By facsimile and letter dated May 21, 2004, to Alana Johnson, Disclosure Officer at the DOT, Monika Kalra Varma, Program Director at the Center again requested information regarding the status of the original and amended FOIA requests. In this facsimile, the Center noted that it had neither received any requested documents nor any justification for the delayed response. Copies of both the original and amended FOIA requests were again included with the facsimile.

12. By facsimile and letter dated June 7, 2004, to Alana Johnson, Disclosure Officer at the DOT, Monika Kalra Varma, Program Director at the Center requested that a contact person in the Department be provided, in an effort to obtain a response to the Center's FOIA request.

**DOT's Responses and Failure to Timely  
Comply With Plaintiff's FOIA Requests**

13. By letter dated September 16, 2003, from Alana Johnson, Disclosure Officer at DOT to Monika Kalra Varma, Program Director at Center, DOT acknowledged receipt of the original FOIA request.

14. By letter dated February 9, 2004, from Alana Johnson, Disclosure Officer at DOT to Monika Kalra Varma, Program Director at Center, DOT acknowledged receipt of the original and amended request and notified the Center that the requests were being forwarded to the appropriate office.

15. By letter dated June 1, 2004, from Alana Johnson, Disclosure Officer at DOT to Monika Kalra Varma, Program Director at Center, DOT acknowledged receipt of the May 21, 2004 facsimile from the Center regarding the status of the FOIA requests. This letter stated that DOT would answer the request as soon as possible.

16. For over 2 years, DOT failed to complete the processing of plaintiff's FOIA requests or inform plaintiff of an anticipated date for the completion of the processing of plaintiff's FOIA requests.

17. When the Center's written requests failed to produce the records in question, the Center made efforts to speak directly with DOT representatives. Monika Kalra Varma, Program Director at the Center conferred or sought to confer with DOT representative Michelle Hinshall on at least 5 separate occasions between July 23 and September 14, 2004. On 3 occasions, Ms. Hinshall told the Center that a backlog was

causing the delay. On September 16, 2004, Ms. Hinshall told the Center that DOT was working on the request and had assembled a task force to address the backlog issue. On October 4, 2004, Monika Kalra Varma was told by Steven Altheim of DOT that the documents would be provided to the Center by the end of the calendar year 2004.

18. There was no further communication from DOT until February 16, 2005, when Kari Fiore-Walker of the Center contacted Steven Altheim. Mr. Altheim told Ms. Fiore-Walker that there was still a backlog and that the documents were still unavailable. At this time, Mr. Altheim also stated that the records should be produced in mid- to late- March 2005.

19. On March 31, the Center again contacted Steven Altheim. At this time, Mr. Altheim stated that a partial production should be ready in late April 2005.

20. On August 18, 2005, Monika Kalra Varma, Program Director at the Center, again spoke with Steven Altheim. Mr. Altheim stated that the IDB U.S. Executive Director's office was causing the delay and that the documents requested were classified. Mr. Altheim refused to provide a timeframe for production of the requested documents at this time.

**DOT's Request for Information  
Regarding a Waiver of Fees**

21. By letter dated September, 22, 2005, from Sara Paulson, DOT Office of Financing Operations to the Monika Kalra Varma, Program Director at the Center, DOT requested additional information regarding a waiver of fees or an agreement to pay fees that might be incurred. This letter was received nearly 2 years to the day after the amended FOIA request by the Center.

**The Center's Fee Waiver Response  
And Second Amended FOIA Request**

22. By letter dated February 3, 2006, to the Office of Financing at the DOT, the Center provided the required information regarding a waiver of fees. See Exhibit A. Also by letter dated February 3, 2006, from Monika Kalra Varma, Program Director at the Center, to Stephen Altheim, Office of Financing Operations at DOT, the Center amended and restated its initial request.

23. In an effort to expedite processing of the request, the Center significantly reduced the number of documents requested in a second amendment to its FOIA request (the "Second Amended FOIA Request"). Specifically, the Center amended the request to narrow the scope and number of documents requested. See Exhibit B.

**DOT's Responses to the Fee Waiver  
and Second Amended FOIA Request**

24. By letter dated March 1, 2006, from Dirk Joldersma, Acting Director of the Office of Financing Operations at the DOT to Monika Kalra Varma, Program Director at the Center, DOT notified the Center that the information provided

regarding fee waiver was sufficient and that the fees for responding to the Center's FOIA request would therefore be waived. DOT also stated that the amended request would be reviewed and that DOT would respond to the Center "soon" regarding partial production of documents as they became available. See Exhibit C.

25. DOT has failed to complete the processing of plaintiff's FOIA requests or inform plaintiff of an anticipated date for the completion of the processing of plaintiff's FOIA requests. To this date, the Center has received no information regarding the status of its FOIA request, and no timeline regarding when its request will be processed.

26. DOT has violated the generally applicable statutory time limit for the processing of any FOIA request. See 5 U.S.C. § 552(a)(6)(A)(i).

27. Defendant DOT and its components have wrongfully withheld the requested records from the Center.

**CAUSE OF ACTION**  
**Violation of the Freedom of Information Act for**  
**Wrongful Withholding of Agency Records**

28. Plaintiff repeats and realleges paragraphs 1-27.

29. DOT has wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for the processing of FOIA requests.

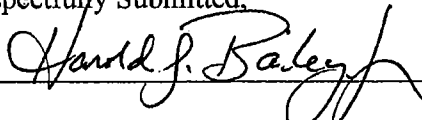
30. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

**Requested Relief**

WHEREFORE, plaintiff prays that this Court:

- A. order defendant DOT to disclose immediately the records requested in the Center's amended FOIA request that was submitted on February 3, 2006: see Exhibit B;
- B. award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- C. grant such other relief as the Court may deem just and proper.

Respectfully Submitted,



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Dated: August 15, 2006

**EXHIBIT A**

## **Robert F. Kennedy Memorial Center for Human Rights**

### **Fee Waiver Request - #03-09-010**

**February 3, 2006**

This is in response to the Department of Treasury's September 22, 2005 fax regarding a fee waiver in connection with FOIA Request #03-09-010. Please note that this FOIA Request has been amended by letter dated February 3, 2006, and the amended FOIA Request is attached hereto.

The Robert F. Kennedy Memorial Center for Human Rights (CHR) is submitting the following information to demonstrate that CHR's FOIA Request meets the requirements set forth in 28 CFR § 16.11(k)(2) and (3).

**Requirement #1 -The disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government**

**CHR's Request meets the four factors comprising this requirement:**

1. The subject of CHR's Request concerns identifiable "operations or activities of the government."

The identifiable activity of the U.S. government that this request addresses the operations and activities of the U.S. Department of Treasury (DOT) in connection with certain loan transactions of the Inter-American Development Bank (IDB), specifically transactions involving Haiti.

In July 1998, the IDB approved \$145.9 million in loans to Haiti. The money was intended to finance four separate development projects in Haiti. CHR believes that DOT officials communicated with IDB officials regarding these Haiti loans. CHR is requesting DOT to produce the record of communications between the DOT, the IDB and other branches of the U.S. government regarding the IDB approved loans to Haiti. The requested documents would help clarify the nature and extent of the U.S. government's operations and activities in connection with these loans.

The CHR is also requesting DOT documents and communications related to a Haitian health and water sanitation project that was to be financed by the IDB loans. These documents would also clarify the nature and extent of the U.S. government's operations and activities in connection with the IDB's actions regarding Haiti.

2. The informative value of the DOT requested documents would be "likely to contribute" to an understanding of government operations or activities.

The record of communications between the DOT, the IDB and other U.S. government agencies related to the Haitian IDB loans is not currently in the public domain. Information regarding the activities and operations of DOT in connection with the IDB loans to Haiti would improve the general public's understanding of the U.S. government position and reasoning regarding these loans. Moreover, U.S. taxpayers fund the U.S. contribution to the IDB, and the taxpayers are entitled to information on how their money is being used.

In addition, the requested documents relating to the Haitian health and water sanitation project would clarify how the IDB loans were to be used. The documents could explain what the IDB was expecting to achieve with the loans and how it chose the location of the projects. Such information would contribute to the taxpayers' understanding of how their contribution to the IDB's funding is managed in connection with specific projects.

3. Disclosure would contribute to the understanding of the public at large.

Disclosure of the requested DOT documents would benefit the public interest and provide taxpayers with information on how the U.S. contribution to the IDB is managed. The FOIA requester, the Robert F. Kennedy Memorial Center for Human Rights, is a 501(c)(3) organization dedicated to realizing Robert F. Kennedy's dream of a peaceful and just world. The CHR has developed domestic and international programs that work to empower the disadvantaged and oppressed. The CHR focuses on using innovative tools to achieve sustainable social justice, including public advocacy initiatives relating to U.S. government and international agencies, and launching consumer awareness campaigns to foster corporate responsibility.

In performing its mission, the CHR has developed considerable expertise at digesting and disseminating information to the public. Regular updates on the progress of its project are published in the CHR's Visionaries in Action (VIA) newsletter, which is circulated to over 7,000 people. The newsletter is also published on the CHR website, which is accessed by over 2000 people. See <http://www.rfkmemorial.org/legacyinaction/chr/> The CHR also has published op-ed articles and open letters in U.S. publications such as Boston Globe, National Geographic, The Ohio Statesman, and the Naples Daily News. The CHR also disseminates the information it receives and analyzes to members of the U.S. government, and U.S. nongovernmental organizations.

As part of its mission, CHR has sought to collect and analyze information regarding the nature and effectiveness of domestic and international programs to

