



Via email

April 29, 2010

Mr. Clint Hendler  
Columbia Journalism Review  
2950 Broadway  
New York, NY 10027

Dear Mr. Hendler:

This letter is in response to your Freedom of Information Law ("FOIL") request that this office received on or about March 4, 2010, requesting:

"...All emails between former communications director Peter Kauffman and members of the press between January 15, 2010 and the present date.  
All emails between press staffer Melissa Shorestein and members of the press between January 15, 2010 and the present date."

Please be advised that as with any FOIL request, we are obligated to grant access to documents or records that are "kept, held, filed, produced or reproduced by, with or for" the Executive Chamber, subject to certain well-defined exemptions. See Public Officers Law §§ 86(4) & 87(2). The Executive Chamber is not obligated to grant access to documents or records that are not in the possession of, or kept for, the Chamber or to documents or records that do not exist. In addition, FOIL does not require the Executive Chamber to create a document or record in response to a FOIL request.

To date, we have collected and reviewed one thousand nine hundred and eleven (1,911) pages of documents or portions of documents that are responsive to your request. However, the requested email communications are exempt in the first instance because they are the work product of journalists. The Public Officers Law § 87 (2) (a) bars disclosure of any documents that are "specifically exempt from disclosure by state or federal statute." Email communications between reporters and their sources, including potentially confidential sources, are privileged communications protected from compelled disclosure by New York's Shield Law. See Civil Rights Law § 79-h. The Shield law provides for both an absolute privilege, protecting the release of confidential news between reporters and their sources. It also provides a qualified privilege for all unpublished work of professional journalists. Therefore, these communications are exempt under FOIL.

Moreover, these emails contain commercially sensitive information. Public Officers Law § 87 (2) (d) separately precludes disclosure of documents that contain information “obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” The disclosure of communications between the reporters of the selected news agencies and their sources of information with the Executive chamber falls within this exemption. The emails sought by your request would reveal competitively sensitive information, such as the ongoing lines of research being pursued by the reporters in connection with stories both published and unpublished; the methods used by reporters to conduct their research, the sources of news, and other types of commercially valuable information. The information you requested is commercially sensitive and its disclosure would cause direct competitive injury to those news organizations you seek to involve.

Pursuant to the provisions of Public Officers Law § 89(4), you have thirty (30) days to take a written appeal of this determination. The designated appeals officer is Gaurav Vasisht, Assistant Counsel to the Governor, at the above address.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey Pearlman". The signature is stylized with large, overlapping loops and a long horizontal stroke at the end.

Jeffrey Pearlman  
Assistant Counsel to the Governor  
Records Access Officer