

January 26, 2005

VIA FACSIMILE: 202-371-6741

Ms. Diane M. Cooke
FOIA Officer
NPS Headquarters
U.S. Department of Interior
1849 C Street, NW
Washington, D.C. 20240

Re: FOIA seeking Teresa Chambers' evaluation and related documents

Dear Ms. Cooke:

This letter will serve a formal complaint and request for action on behalf of Teresa Chambers and PEER regarding the National Park Service's (NPS) handling of and response to PEER's FOIA request seeking a copy of Deputy Director Donald Murphy's evaluation of Chief Chambers.

As you know, PEER's FOIA request was dated October 26, 2004. You acknowledged the request in a letter dated November 18, 2004. In that letter you committed that the agency would file a final reply to PEER's FOIA request "on or before December 23, 2004." The agency did not meet that deadline.

On January 18, 2005, Alfred J. Poole III provided a final response for the agency. Mr. Poole responded as follows: "[w]e have search our files and did not find any documents responsive to your request." It took the agency almost three months to say that there are no responsive documents. Such a response is not credible for several reasons.

First, the document that was requested is a specific document that did not require a search through cumbersome files to locate. Employee evaluations are maintained in the regular course of business and such evaluations are usually tracked quite carefully. Therefore, ten weeks is an excessive amount of time to determine that the evaluation and surrounding records do not exist.

Second, the document requested and similar records are part of an on-going federal legal proceeding before the Merit Systems Protection Board

(MSPB). Chief Chambers' evaluation and related documents are a central issue in the appeal before the MSPB. One of the issues before the MSPB is whether Mr. Murphy's evaluation should be considered in Chief Chambers' case. Mishandling or destruction of Chief Chambers' evaluation could be considered a crime.

Finally, Mr. Murphy testified under oath and in some detail about the evaluation he prepared and who might have seen or reviewed the document. See attached excerpt of Mr. Murphy's deposition testimony. If the evaluation does not exist, then there is a question of whether Mr. Murphy testified truthfully.

Please have the appropriate agency officials check directly with Mr. Murphy to confirm whether or not Chief Chambers' evaluation is available. Please also check with agency counsel (including outside counsel) who were involved in the Chambers' litigation to determine if the document(s) exist in their files.

It is my hope that the failure to produce Chief Chambers' evaluation is merely an error or misunderstanding. However, if Chief Chambers' evaluation has been destroyed or is missing, the issue will be brought to the attention of the MSPB and the appropriate law enforcement officials.

Please respond in writing to the requests herein on or before the close of business Friday, January 28, 2005. My facsimile number is: 202-265-4192.

Sincerely,

Richard E. Condit
General Counsel
PEER

Co-counsel to Teresa Chambers