



United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlr.gov

October 21, 2011

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

Today, as part of my ongoing response to the subpoena served on this office on August 7, 2011, I enclose a CD containing substantially unredacted emails previously provided to Judicial Watch in redacted form pursuant to the Freedom of Information Act (FOIA).¹ As a result, the Committee is receiving information not available to the public pursuant to FOIA.

As Agency staff explained to Committee staff, the redactions made to documents produced under the FOIA were not simultaneously reviewed to determine if those redactions were appropriate for the Committee. My staff undertook a separate review of those documents to ensure we would provide unredacted documents to Congress, where appropriate.

I regret that this subsequent review led to the Committee receiving these documents after the Agency produced the redacted FOIA versions to Judicial Watch. My staff has pledged to ensure that the Committee receives documents contemporaneously with, if not before, any FOIA requesters. In this regard, my staff will produce additional emails and documents to the Committee next week.

¹ On Wednesday, October 19, 2011, Agency staff explained to Committee staff the exact nature of two documents that continue to be redacted. The first document has been redacted to protect the privacy of persons not employed by the Agency. The second document is a legal memorandum, known as a position statement, provided to the regional office by Boeing that is not currently available to IAM and contains evidence and the work product of Boeing attorneys.

As I have previously explained, the decision to issue a complaint in this case was made after a thorough investigation and a careful review of the law and facts. That decision was not in any way influenced by any external factors. In this regard, the National Labor Relations Board (Board) was not involved in the investigation of this case or in the decision of this office to issue a complaint.

As you know, the Committee's requests for documents on May 12, 2011 and July 12, 2011 sought "documents and communications referring or relating to the Office of the General Counsel's investigation of Boeing, including but not limited to all communications between the Office of the General Counsel and the National Labor Relations Board". We, in good faith, responded that there were no documents responsive to this request.

It is clear that the subpoena served on the Office of the General Counsel by the Committee on August 7, 2011 seeks documents that go beyond the investigation and relate generally to the Boeing Company. This subpoena covers documents containing even casual references to the Boeing Company and the exchange of articles related to the political and legal debate that ensued after the issuance of the complaint.

We have undertaken a search for and review of hundreds of thousands of documents in response to the subpoena. As that process has proceeded, this office has provided documents to the Committee on a rolling basis. Included in the documents produced to the Committee were post-complaint email exchanges between me and the former Chairman of the Board in which we exchanged one news article and a press release.

The NLRB takes seriously the separation between the Office of the General Counsel and the Board because the General Counsel may eventually present a case on appeal to the Board. However, email exchanges about news articles and press releases after the issuance of the complaint do not implicate the separation principle because they obviously could have no impact on the investigation or decision to issue a complaint against Boeing or on the prosecution of this case.

As we further review emails and documents, we will continue to provide them to the Committee on a rolling basis, consistent with our need to protect the integrity of the ongoing proceedings and the rights of the parties to have a fair trial.

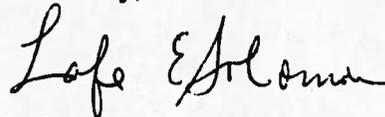
We continue to have serious concerns that the premature release of certain documents will infringe on the rights of the parties to this case and put the integrity of this ongoing law enforcement proceeding at risk. Specifically, the search requested by the Committee has and will continue to capture documents that contain deliberative material, settlement discussions, trial strategy, and confidential submissions by the parties and potential witnesses.

In addition, it is our view that subjecting agency officials, including the lead trial attorney on the case, to transcribed interviews poses significant risks to the proceeding and is unnecessary. For that reason, we appreciate your agreement to defer your request for an interview of the lead attorney in the Boeing case.

Agency staff has committed to addressing the concerns raised in the Committee's October 17, 2011 letter within the next two weeks and to improving communication with Committee staff about the nature of this office's ongoing productions to the Committee.

I reiterate my previous offer to informally brief you and Ranking Member Cummings to supplement the production of the thousands of pages of documents this office has already provided the Committee. I believe that an informal briefing would also serve to address any concerns you may have about the independence of my office and the integrity of our administrative investigation and decisions.

Sincerely,



Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform