

FOIA MARKER

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Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Counsel Office

Series/Staff Member: Marvin Krislov

Subseries:

OA/ID Number: 6741

FolderID:

Folder Title:

Bush National Service

Stack:

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Row:

113

Section:

3

Shelf:

3

Position:

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Marvin,

Attached please find a very rough draft of a memo covering part of the information in the Bush report and files. I have spoken with Adam about the project and he understands that the focus needs to be changed in the manner we discussed. Since I never had the opportunity to discuss the project with you in detail, I thought you might want to look this over and give Adam any further direction that is needed.

Thanks. I enjoyed working with you. If you have any questions, I can be reached at (301) 942-1218 until Tuesday and then I will be back at school at (804) 977-7377.

Jeff

JEK

*File - Nat. Service
Bush*

MEMORANDUM

TO: Marvin Krislov, Assistant Counsel to the President
FROM: Jeff Ross
DATE: August 19, 1994
RE: Treatment of FOIA Requests Concerning The White House
Office of National Service

I. INTRODUCTION

This memo responds to your request to determine the applicability of the Freedom of Information Act ("FOIA") to the White House Office of National Service ("Office"). A Department of Justice ("DOJ") memo delineates the extent to which the FOIA applies to the Executive Office of the President. Using this determination as a guideline, this memo examines the President's Report to the Nation on the Points of Light Movement, the Freedom of Information Act Guide & Privacy Act Overview, and the documents compiled by the Bush administration concerning the White House Office of National Service to explore whether the FOIA applies to the Office.

II. DOJ STANDARD FOR EVALUATING THE FOIA STATUS OF THE OFFICE

In a memo dated November 3, 1993, Associate Attorney General Webster Hubbell set forth the procedures for FOIA consultation of agency files containing information originating from the White House. Webster L. Hubbell, White House Records or Information Found In Agency Files: FOIA Consultation Procedures, November 3, 1993 at 1. He related that the FOIA applies to the Executive Office of the President, but does not "include either 'the President's immediate personal staff' or any part of the Executive Office of the President 'whose sole function is to advise and assist the President.'" Id. According to these definitions, the "parts of the Executive Office of the President that are known as the 'White House Office' are not subject to the FOIA, while certain other parts of the Executive Office of the President are" subject to its provisions. Id. The crucial inquiries appear to be (1) whether the Office serves an advisory role assisting the President in his policymaking tasks or whether the Office functions more like an independent entity such as an executive agency and (2) whether the Office is considered a part of the "White House Office."

III. THE PRESIDENT'S REPORT TO THE NATION ON THE POINTS OF LIGHT MOVEMENT

In January 1993, President Bush released his report on the Points of Light Movement ("Report"). The White House Office of National Service was one of four institutions created to assist in implementing the Points of Light Movement. George Herbert Walker Bush, The Points of Light Movement: The President's Report to the Nation, January 8, 1993 at 9 ("President's Report"). The other three institutions were the Points of Light Foundation, the Commission on National and Community Service, and the National Center for Community Risk Management and Insurance. Id. The Office managed the Points of Light Foundation including recommending goals for the foundation. White House Press Release, January 4, 1990. The President's Report contains descriptions of the Office advising the President, which suggest that it should be considered part of the White House Office and exempt from the FOIA. Other language in the report describes a more independent role for the Office in coordinating activities with the Points of Light Foundation and the Points of Light Initiative and conducting national constituency outreach efforts.

A. The Office's Role In Advising and Assisting the President in Policymaking

The President's Report describes the Office as "the first ever established within the White House exclusively devoted to fostering direct and consequential voluntary service" and states its mission as "to use Presidential leadership to make community service national policy of the highest order." President's Report at 9. The language "within the White House" and "use Presidential leadership to make ... national policy" suggests that the Office should be considered an entity within the White House Office and that the Office was established to directly assist the President in policymaking.

Additional statements of the Office's purpose in the Report convey that the Office "coordinates Presidential activities that highlight the value and rewards of voluntary community service" and "helps the President identify and recognize successful problem-solving leaders and initiatives." Id. at 9, 10. These descriptions using the language of "coordinates Presidential activities" and "helps the President" depict the Office as a White House Office entity which advises the President and assists in policymaking, rather than acting as an independent entity.

B. Independent Role of the Office

The President's Report states that the Office "seeks to define the importance and nature of the Points of Light for the public," "enlists Americans to contribute their leadership" to the community service movement and "calls for and supports new

institutions and policy initiatives that build and strengthen the Points of Light movement." Id. at 12, 14. This language suggests that the Office coordinates and manages the Administration's efforts to promote community service and develop public support for community service participation. In this capacity, the Office may be viewed as running separate programs similar to independent or executive agencies, rather than advising and assisting the President.

VI. DOCUMENTS FROM THE BUSH ADMINISTRATION CONCERNING THE OFFICE

The Bush Presidential library provided a substantial number of documents concerning the Points of Light Initiative. The primary function of the Office was to coordinate the activities of the Points of Light Foundation and the Points of Light Initiative. These papers provide some insight into the Office and demonstrate that while it coordinated a program to promote community service, it also served in an advisory role to the President.

A. The Office's Role In Advising and Assisting the President in Policymaking

A publication entitled "The Points of Lights Initiative: Community Service as National Policy," describes the White House Office of National Service as performing the following functions: advising the President, communicating the President's community service strategy, proposing ways for the President to highlight outstanding community service initiatives, participating in the solution of problems, and recommending government policy reforms. The language of advising the President, communicating his strategies, and proposing ways to highlight his initiatives describe an advisory role for the President, which indicates that the FOIA would not apply to the Office.

B. Independent Role of the Office

One of the primary functions of the Office appears to be managing the activities of the Points of Light Foundation and the Points of Light Initiative. The Points of Light Foundation is a private foundation consisting of directors appointed from corporations, non-profit organizations and PVOs and chaired by President Bush. The Points of Light Initiative is a program supported by the Foundation and coordinated by the Office, which seeks to involve businesses, community groups, religious organizations, individuals, etc. in community service throughout the country.

A document which appears to be an earlier draft of the "Points of Light" publication, states the functions of the Office as recognizing and activating the innate desire and ability of

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people to solve community problems, identifying exemplary community service initiatives for replication and recognition, attracting persons to community service, participating in the formation of policies to address community problems, recommending government policy reforms. With the exceptions of developing policies and recommending government policy reforms, these activities do not involve advising and assisting the President and can be viewed as outside of the White House Office.