



UNDER SECRETARY OF THE ARMY
WASHINGTON

29 MAR 2000



CHALLENGE Number 2000-0100

[REDACTED]
President
American Federation of Government Employees
Local 1815
P.O. Box 620726
Fort Rucker, Alabama 36362

Dear [REDACTED]

This responds to your appeal of the February 24, 2000, decision of the Assistant Secretary of the Army (Manpower and Reserve Affairs), denying your challenge to the 1999 FAIR Act inventory. I received your appeal on March 13, 2000.

Installation Support Functions

Activity Challenged. You are appealing the decision that the installation support functions included in Function Code W999 for "Other ADP Functions," Function Code Y120 for "Operational Planning and Control," Function Code Y200 for "Commanders and Support Staff," Function Code Y410 for "Criminal Investigation," Function Code Y510 for "Budget and Financial Program Management," Function Code Y530 for "Personnel, Community Activities and Manpower Program Management," Function Code Y530 for "Maintenance and Logistics Program Management," Function Code S700 for "Natural Resource Services," Function Code S701 for "Advertising and Public Affairs," and Function Code Y999 for "Other Functions" were properly included on the list.

Decision. I have reviewed the Assistant Secretary's decision, which is incorporated herein by reference, in light of your appeal. Based upon this review, I have determined that the selected activities included under the above Function Codes pertaining to installation support functions are not inherently Governmental. Therefore, I am affirming the challenge decision that they are properly included in the Army's FAIR Act list.

Rationale. Your appeal suggests that Function Code W999 should be inherently Governmental because contractor performance of information technology functions would result in security risks not applicable to in-house personnel who, you contend, are more experienced in the interpretation and execution of laws that pertain to communications security. Your appeal further contends that contractor performance of the protocol function would undermine the trust of commanders; that contracting the



functions performed in the Directorate of Plans, Training and Security is improper because the plans developed and decisions made in this function directly affect readiness; that the Director of Logistics functions included under Function Code Y540 are inherently Governmental because they prioritize projects and assure the operations of the installation during times of limited budgets and increasing OPTEMPO; that the personnel, community activities and manpower functions included in Function Code Y540 are inherently Governmental because they impact soldier quality of life; that contractor performance of the support functions included under Function Code Y410, "Criminal Investigation," would burden the organization and interfere with protecting the chain of evidence and confidentiality of information; and that public affairs function involves discretion and the making of value judgments that are inherently Governmental because this function affords access to sensitive information and involves determinations on the release of information to the public.

But contractor performance is not at issue here. Rather, the FAIR Act challenge and appeal process is limited to the issue of determining what functions are or are not inherently Governmental. Determining what is or is not inherently Governmental, the focus of the FAIR Act, is a different issue from determining what is appropriate for private sector performance. Moreover, under Appendix B of the Office of Federal Procurement Policy Letter (OFPP) 92-1, contractor access to sensitive information ordinarily does not render the contractor's service or action as being considered inherently Governmental. So long as appropriate safeguards are in place in the administration of the contracted work, the presumption of Appendix B that the function is not inherently Governmental holds. Indeed, security concerns apply equally to Federal employees, and not just to contractors.

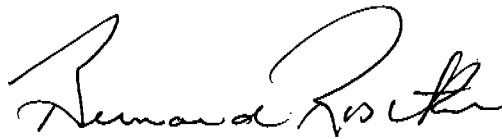
Your appeal incorporates military personnel into the functional definitions for Function Codes Y120 and Y200. But the Assistant Secretary's decision explicitly excludes the command and control functions performed by military, as well as military in general, from the scope of his determination.

Your appeal contends that the portion of the resource management function included on the list under Function Code Y510 should be excluded from the list because these functions provide input to decision-makers. However, inherently Governmental functions within the meaning of the FAIR Act do not normally include providing advice, opinions, and recommendations to Government officials. The grade presumption applied by the Assistant Secretary was intended to distinguish between the installation level performance of some functions (such as resource management) presumed to be not inherently Governmental, and the senior policy-makers within that same function within a management headquarters. The grade presumption did not apply to most installation level functions, which were deemed to be completely non-inherently Governmental irrespective of grade level.

Your appeal contends that contracting forestry management, game and fish management, soil conservation and other natural resource functions would give

contractors discretionary authority in the disposition of the installation's natural resources and enforcement of Federal and State environmental laws. But the natural resources functions at installation level are presumed not to involve the kind of substantial discretion assumed in your appeal because policy making and enforcement in the environmental protection area is vested in other Governmental regulatory agencies and in Army management headquarters.

Please note that the Army's FAIR Act determinations are only one step in pursuing a larger objective. The larger objective is to ensure that Army functions and activities are performed in a manner that is both cost-effective and in the best interests of the taxpayers. In this connection, the Army FAIR Act inventory will be reviewed in conjunction with Army's larger, ongoing review of all functions for possible reengineering, privatization, consolidation or other reinvention efforts. As the Assistant Secretary indicated, these reviews may lead to decisions to keep performance of some activities in-house based on risk assessment, national security considerations, or enlightened human resources management.

A handwritten signature in black ink, appearing to read "Bernard Rostker". The signature is fluid and cursive, with a large initial "B" and "R".

Bernard Rostker