



United States Department of the Interior


U.S. GEOLOGICAL SURVEY
Reston, Virginia 20192

In Reply Refer To:
Mail Stop 205

FEB 19 2003

MEMORANDUM

To: Libby Chandler, President
American Federation of Government Employees, Local 1309

From: Carol F. Aten 
Chief, Office of Administrative Policy and Services

Subject: Fiscal Year (FY) 2002 FAIR Act Inventory Challenge

This memorandum responds to your challenge dated January 6, 2003, regarding the U. S. Geological Survey (USGS) FAIR Act Inventory for FY 2002. Your challenge identifies you as an interested party as defined in section 3(b) of the FAIR Act, *Public Law 105-270*. The USGS confirms that you are an interested party per the Act's definition and that your challenge was filed in a timely manner. Thank you for your interest in assuring that USGS Full Time Equivalents (FTEs) are appropriately coded in the inventory.

To help you understand the FAIR Act Inventory, the following is an explanation of the USGS inventory process. There are approximately 35 USGS points of contact (POCs) that prepare the inventory. The starting point for compiling the inventory is personnel rosters by USGS organization.

Using the personnel rosters, each employee is assigned one or more function codes that most closely describe the work performed in his or her position. Then, the POCs use the USGS Bureau Guidance (in FY 2002 there were 18 guidelines for inherently governmental functions, and 8 for commercial functions) to determine if the employee is doing an "inherently governmental" or "commercial" activity. This information is sorted and summed by function code and FTE, then entered into the USGS FAIR Act Inventory Web tool.

When all POCs have input their data into the Web tool, the website is closed. The Competitive Sourcing Team compiles the data from the website and reviews it for accuracy. The finalized inventory is sent to the Department of the Interior, which forwards it to the Office of Management and Budget (OMB) for review. The final data is announced to the public through the Federal Register.

You challenge the FAIR Act inventory coding of the function G104 as commercial. You base your challenge on the following:

“Employees who perform duties within Function Code G104 should be classified as inherently governmental. Their work requires the interpretation and execution of the laws of the United States.”

“The function involves management, procurement or contracting functions.”

“The employees have access to procurement or competition sensitive documentation.”

“The work involves access to personal information.”

“The agency was not consistent in its assignment of reason codes for the Function Code G-104 Technical/Professional/Legal Library Information Services.”

You also challenge the FAIR Act Inventory coding of the function of the U.S. Geological Survey's Geologist-Historian FTE as commercial. You base your challenge on the following:

“Historical information, analyses, and reports prepared to ensure better internal understanding of the origin, nature, and effect of USGS historic plans, policies, activities, and products, and those of its direct predecessors since 1867 (includes reviews of historical aspects of reports by USGS and other colleagues).”

“Data gathered from published and unpublished source materials relating to the history of the USGS and the earth sciences and processed to meet the requirements of internal and external users and to support incumbent's prioritized investigations – especially those relating to the USGS' scientific, engineering, and managerial heritage.”

“Results of research completed under items 1 and 2 presented at meeting of science agencies and professional societies and revised versions published through the Government Printing Office (GPO) or outside presses (in peer-reviewed books or major journals). Incumbent (whose publications date from 1966) also served as research associate, reviewer, and editor for USGS Circular 1050 (1989) and Volumes 1-3 10 1939; published 1979-1986) of the ongoing history of the USGS and Federal policies and activities in the earth sciences. As co-author for Volume 4 (1939-1979) work continues toward completion following death in 2003 of the senior author (who had retired from the USGS in 1978).”

“Information exchanged with historians of geology in state, provincial, national, and international science agencies and societies, and those in the archival and historical communities. Represented the USGS at professional meetings and interagency conferences. Worked closely with the records-management programs of the USGS and the National Archives and Records Administration (NARA) in the retirement, accession, arranging, and inventorying of USGS documents. In cooperation with NARA, arranged

for and edited USGS Circular 1179 (CD-ROM, 2000) "Records and History of the United States Geological Survey."

"Authoritative and prompt responses made to direct or forwarded queries, from within the USGS or by the public, relating to the history of the USGS and the earth sciences.

As stated above there are 18 guidelines for inherently governmental positions, the first 7 of which apply to functions, the last 11 of which apply to positions. For your reference, they are:

- Guideline 1. -- Designing and establishing USGS policy.
- Guideline 2. -- Representing the USGS in negotiations to determine the nature and the scope of work performed.
- Guideline 3. -- Standards setting.
- Guideline 4. -- Mission activities that result in conclusive analysis and findings establishing Bureau positions.
- Guideline 5. -- Mission activities involving analysis and interpretation that determine, protect, or advance the resource interests of the United States and result in findings and conclusions used with confidence by public decision makers because they are endorsed by the USGS.
- Guideline 6. -- Mission activities involving decisions that immediately and significantly affect life and property.
- Guideline 7. -- Any other function explicitly identified as inherently governmental in Office of Federal Procurement Policy (OFPP) Policy Letter 92-1.
- Guideline 8. -- Program coordinators and deputy program coordinators.
- Guideline 9. -- Managers.
- Guideline 10. -- Supervisors and rating officials.
- Guideline 11. -- Personnel required to file a Confidential Financial Disclosure Report, OGE Form 450.
- Guideline 12. -- Human resources officers.
- Guideline 13. -- Human resources staff that approve position descriptions.
- Guideline 14. -- Contracting officers representatives.
- Guideline 15. -- Procurement officials who award, negotiate, or administer contracts and real property leasing officials and grants management officials performing comparable functions for those transactions.
- Guideline 16. -- Personnel, including administrative personnel, who obligate funds and/or approve payment transactions.
- Guideline 17. -- Immediate support staff that are nonseverable from inherently governmental functions.
- Guideline 18. -- Any other position explicitly identified in OFPP Policy Letter 92-1.

G104 Challenge Response:

1. *"Employees who perform duties within Function Code G104 should be classified as inherently governmental. Their work requires the interpretation and execution of the laws of the United States."*

The definition of the G104, "Technical/Professional/Legal Library Information Services" function code is as follows:

- G104A = Supervising and Managing -- The function includes supervision and management of library functions listed below.
- G104B = Library Functions at the Headquarters and Regional Level -- Includes activities at the Headquarters and Regional Level concerned with the collection, organization, preservation, and retrieval of recorded knowledge in printed, written, audiovisual, film, wax, near-print methods, magnetic tape, or other media. Typical library functions include the selection, acquisition, cataloging, and classification of materials, bibliographic and readers' advisory services, reference and literature searching services, library management and systems planning, or the development and strengthening of library services.
- G104C = Library Functions at the Cost center Level -- Same definition as above, only the function is accomplished at the cost center level.
- G104D = Archive -- This function includes activities involved in appraising, accessioning, arranging, describing, preserving, publishing, or providing reference service from USGS maps inventory and historic documents.

Per the definition for the G104 function code above, interpretation and execution of the laws of the United States are not within the duties included routinely within this code. An FTE would be coded as inherently governmental only if it met one or more of the guidelines listed above.

Assuming that the function code was applied properly to the FTE in question (and this issue is not part of this challenge, nor is the challenging of the use of a specific function code consistent with the criterion for a FAIR Act challenge), only the guidelines stated above would be sufficient rationale for the coding of these FTE as inherently governmental.

2. *"The function involves management, procurement or contracting functions."*

The G104 function code does not meet the guidelines stated in the first 7 guidelines pertaining to functions. However, for particular positions, it would be appropriate for them to be classified as inherently governmental based upon their denotation as Contracting Officer's Representatives (Guideline 14). This criterion was used in a case-by-case evaluation during the preparation of the FAIR Act Inventory. Likewise, a G104 FTE that normally would be considered commercial would instead be classified as inherently governmental if the position in question were that of a manager (Guideline 9) or a supervisor or rating official (Guideline 10).

3. *"The employees have access to procurement or competition sensitive documentation."*

Again, Guideline 14 would apply to FTE that are specifically designated as CORs. However, this attribute does not normally apply unilaterally to all G104 FTEs.

4. *"The work involves access to personal information."*

If, in this case, the particular FTE were required to file a Confidential Financial Disclosure Report, OGE Form 450, the FTE would be classified as inherently governmental based upon Guideline 11.

5. "The agency was not consistent in its assignment of reason codes for the Function Code G-104 "Technical/Professional/Legal Library Information Services."

As you note, (and hopefully as is explained above) in certain cases G104 FTEs are, in fact, denoted as inherently governmental (thus the perceived inconsistency in the application of reason codes). Certain of these FTE were deemed inherently governmental because their function or position met one or more of the 18 reason codes listed above, and they were given the classification of "N/A."

Geologist-Historian Challenge Response:

1. *"Historical information, analyses, and reports prepared to ensure better internal understanding of the origin, nature, and effect of USGS historic plans, policies, activities, and products, and those of its direct predecessors since 1867 (includes reviews of historical aspects of reports by USGS and other colleagues)."*

This function does not meet any of the necessary guidelines (defined above) to classify this FTE as inherently governmental.

2. *"Data gathered from published and unpublished source materials relating to the history of the USGS and the earth sciences and processed to meet the requirements of internal and external users and to support incumbent's prioritized investigations – especially those relating to the USGS' scientific, engineering, and managerial heritage."*

This function does not meet any of the necessary guidelines (defined above) to classify this FTE as inherently governmental.

3. *"Results of research completed under items 1 and 2 presented at meeting of science agencies and professional societies and revised versions published through GPO or outside presses (in peer-reviewed books or major journals). Incumbent (whose publications date from 1966) also served as research associate, reviewer, and editor for USGS Circular 1050 (1989) and Volumes 1-3 10 1939; published 1979-1986) of the ongoing history of the USGS and Federal policies and activities n the earth sciences. As co-author for Volume 4 (1939-1979) work continues toward completion following death in 2003 of the senior author (who had retired from the USGS in 1978).*

Additional, more specific information is necessary to perform a complete analysis, but it is possible that this FTE could be considered inherently governmental through meeting the definition of Guideline 5 ("Mission activities involving analysis and interpretation that determine, protect, or advance the resource interests of the United States and result in findings and conclusions used with confidence by public decision makers because they are endorsed by the USGS.") Absent such further information, this FTE would be considered commercial.

4. *"Information exchanged with historians of geology in state, provincial, national, and international science agencies and societies, and those in the archival and historical communities. Represented the USGS at professional meetings and interagency conferences. Worked closely with the records-management programs of the USGS and the National Archives and Records Administration in the retirement, accession, arranging, and inventorying of USGS documents. In cooperation with NARA, arranged for and edited USGS Circular 1179 (CD-ROM, 2000) "Records and History of the United States Geological Survey."*

Again, additional, more specific information is necessary to perform a complete analysis, but it is possible that this FTE could be considered inherently governmental through meeting the definition of Guideline 5, as noted above. Without further clarification, this FTE would be considered commercial.

5. *"Authoritative and prompt responses made to direct or forwarded queries, from within the USGS or by the public, relating to the history of the USGS and the earth sciences."*

This function does not meet any of the necessary guidelines (defined above) to classify this FTE as inherently governmental.

In closing, our response to your challenge, based on the information above, is that the G104 and Geologist-Historian functions are commercial. We hope the reasons for giving you this response are clear. However, you have a right to appeal the decision, in whole or in part within ten (10) working days of receipt of this memorandum. Any such appeal should be addressed to:

P. Lynn Scarlett
Assistant Secretary - Policy, Management and Budget
1849 C Street NW / Mail Stop 1418
Washington, DC 20240

In addition, a second copy of your appeal should be addressed to:

Debra E. Sonderman, Director
Office of Acquisition and Property Management
1849 C Street NW / Mail Stop 5512
Washington, DC 20240