

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. **04-cv-01264-LTB-PAC**

MARY M. HULL,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF LABOR,

Defendant.

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**PLAINTIFF'S MOTION FOR JUDICIAL DECREE and  
AWARD OF ATTORNEY'S FEES AND REIMBURSEMENT OF EXPENSES**

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For the following reasons Plaintiff MARY M. HULL (HULL), through her counsel, hereby moves for a judicial decree and an award of attorney's fees and reimbursement of expenses, pursuant to the Freedom of Information Act, 29 U.S.C. § 552(a)(4)(E) (FOIA), and 28 U.S.C. Section 1927. Submitted herewith in support of this motion is the Declaration of Curtis L. Kennedy (Exhibit 1).

**I. BACKGROUND.**

This civil action was commenced on June 18, 2004, after the DOL denied HULL's FOIA request and refused to give her even a single piece of paper concerning an investigation of the Qwest Pension Plan.<sup>1</sup> Of course, after the litigation was underway, the federal agency began to turn over requested documents. The first wave of documents consisted of about 4,000 pages.

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<sup>1</sup> Mary "Mimi" HULL is a former employee of U S WEST, having retired in February 1990. She is a participant in the Qwest Pension Plan and receives a monthly service pension annuity. HULL is the elected President of the Association of U S WEST Retirees (AUSWR) an organization of over 20,000 retirees formed 10 years ago when retirees learned that U S WEST had improperly charged millions of dollars of expenses to the U S WEST Pension Plan and was moving towards reneging on a lifetime promise of health care benefits. Ms. HULL commenced her FOIA request as part of her duties to help the retiree organization police the pension plan, now called the Qwest Pension Plan.

Then, there were successive waves of disclosures, but, only after the DOL engaged in a protracted game of ‘cat and mouse,’ trying to keep one step ahead of a judicial order requiring federal agency compliance with FOIA. Indeed, Chief Judge Babcock amply recognized the DOL’s very troubling behavior in this litigation in his December 2, 2005 Order wherein the Court denied the DOL’s request for dismissal of this action. (See Docket 28).<sup>2</sup> In that Order, the Court stated:

“Hull argues, cogently, that a citizen should not have to file a lawsuit to make a federal agency comply with the law. An agency that has committed this many questionable acts in response to a FOIA request, Hull contends, lacks credibility to assert a FOIA exemption and the court should therefore deny the DOL’s motion for summary judgment and subject any withheld documents to *in camera* review. The DOL does not respond to these allegations of bad faith, . . . More significantly, Hull’s cumulative evidence shows a disturbing trend of agency behavior. While any one of the instances Hull cites might be attributable to mistake, oversight or lack of internal agency coordination and communication, Hull’s extensive list of agency conduct suggests a ***pattern of obstructing*** Hull’s FOIA request and indicates that the DOL was not behaving in the spirit of FOIA, providing information in an open fashion to enable citizens to hold their government accountable. *Anderson*, 907 F.2d 941.”

(Docket 28, pp. 18-19) (emphasis added). This Court went on to rule, *inter alia*, that certain documents the DOL withheld from HULL on the basis of an alleged FOIA Exemption 4 are not, in fact, subject to FOIA Exemption 4 and the DOL subsequently produced those documents to HULL. In addition, the Court granted HULL’s request for an *in camera* inspection of other disputed documents and ordered some of those inspected documents produced to HULL.

Nevertheless, the DOL continued with its behavior to thwart HULL’s legitimate FOIA request. HULL was required to submit *another* motion for Summary Judgment and request of a second *in camera* inspection because it was discovered the DOL was withholding another batch

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<sup>2</sup> In the December 2, 2005 Order, this Court described this case as “an ongoing tug of war between Hull and the DOL over the DOL’s reports from an investigation of the Qwest Pension Plan (“QPP.”). (Docket 28, p. 1).

of papers that should have been produced. (See Docket 29, filed on December 21, 2005). True to its stubborn litigious position, the DOL opposed that motion. (See Docket 30). Then, only after HULL filed yet another legal brief (See Docket 33) pointing out the DOL's contradictions and weaknesses in its legal argument, would the DOL give HULL the disputed papers.

The DOL's conduct forced HULL to exercise her right to commence this civil action. As this Court succinctly put it, "the record strongly suggests that HULL's lawsuit prompted the DOL to release this information." (See Docket 28, p. 20).

## II. ARGUMENT

### A. The Court Should Grant HULL a Judicial Decree Pursuant to 5 U.S.C. Section 552(a)(4)(F) and 28 U.S.C. Section 1927.

HULL litigated this FOIA ordeal for almost 20 months. The DOL, through Assistant United States Attorney Michael Johnson, tells HULL and her counsel that everything has now been produced, except a few pages that the parties agree are subject to an attorney-client privilege. (See Exhibit 1, Declaration of Kennedy, p. 3 ¶ 10). Before this case was filed, HULL had nothing. HULL's litigation successfully caused the DOL to provide her over 6,000 pages of FOIA responsive paperwork. Now, the DOL will contend the case is moot. In general, "[o]nce the government produces all the documents a plaintiff requests, her claim for relief under the FOIA becomes moot." *Anderson v. U.S. Dep't of Health & Human Servs.*, 3 F.3d 1383, 1384 (10<sup>th</sup> Cir. 1993). Not so fast.

In her Complaint at paragraph 19 and paragraph A of the Prayer For Relief, HULL both alleges and asks this Court, "pursuant to FOIA, 5 U.S.C. § 552(a)(4)(F), [to] issue an order finding that the circumstances surrounding the withholding of documents responsive to HULL's FOIA request raises questions whether DOL agency personnel acted arbitrarily or capriciously with respect to the withholding." 5 U.S.C. Section 552(a)(4)(F) states:

“Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally **issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding**, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.” (emphasis added).

HULL should be granted such a judicial decree with the requested finding. The DOL deliberately chose to put HULL and her attorney through an unnecessary and protracted litigation process, one involving multiple motions seeking judicial relief, only to see the DOL ‘cave-in’ just ahead of Court ordered compliance. The public will be best served if the DOL is called on the carpet for its obstructionist behavior and the federal agency is put to task to take corrective action.

The DOL’s unnecessary litigious behavior also supports a ruling by this Court that the DOL be held accountable for a violation of 28 U.S.C. Section 1927 which provides:

“Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.”

While HULL and her counsel are not placing the blame personally on United States Assistant Attorney Michael Johnson, Plaintiff strongly contends the DOL’s actions were calculated to cause HULL to incur a lot of trouble before the federal agency would perform its duty under FOIA.

**B. The Court Should Grant HULL an Award of Attorney's Fees and Expenses, Since She Substantially Prevailed in this Protracted FOIA Litigation.**

Under FOIA, this Court “may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case ... in which the complainant has substantially prevailed.” 5 U.S.C. §552(a)(4)(E). Assessment of attorney's fees in an FOIA case is discretionary with the district court. *Aviation Data Serv. v. FAA*, 687 F.2d 1319, 1321 (10th Cir. 1982) (holding that the district court should be guided by the following four factors: “(1) the benefit to the public, if any, derived from the case; (2) the commercial benefit to the complainant; (3) the nature of the complainant's interest in the records sought; and (4) whether the government's withholding of the records had a reasonable basis in the law.”

In *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001), the Supreme Court considered the attorney's fees provisions of the Fair Housing Amendments Act, 42 U.S.C. Section 3601 *et seq.*, and the Americans with Disabilities Act, 42 U.S.C. Section 1201 *et seq.*, which permit courts to award fees only to a “prevailing party.” *Id.* §§ 3613(c)(2), 12205. The Court rejected the plaintiffs’ contention, which it characterized as the “catalyst theory,” that “a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct.” *Buckhannon*, 532 U.S. at 601, 121 S.Ct. 1835. Rather, the Court ruled, for a litigant to be a “prevailing party,” there must have been a “judicially sanctioned change in the legal relationship of the parties.” *Id.* at 605, 121 S.Ct. 1835. “[E]nforceable judgments on the merits and court-ordered consent decrees,” the Court said, suffice to create such a change. *Id.* at 604, 121 S.Ct. 1835.

In *Oil, Chemical & Atomic Workers International Union v. Department of Energy* (OCAW), the District of Columbia circuit extended the holding of *Buckhannon* to the fee-shifting

provision of FOIA. 288 F.3d 452, 454-57 (D.C. Cir. 2002). The *OCAW* court concluded that “the ‘substantially prevailed’ language in FOIA [is] the functional equivalent of the ‘prevailing party’ language found in” the statutes interpreted in *Buckhannon*. *Id.* at 455-56. It “therefore held that in order for plaintiffs in FOIA actions to become eligible for an award of attorney’s fees, they must have ‘been awarded some relief by [a] court,’ either in a judgment on the merits or in a court-ordered consent decree.” *Id.* at 456-57 (quoting *Buckhannon*, 532 U.S. at 603, 121 S.Ct. 1835).

While HULL disagrees with the District of Columbia Circuit Court’s decision in *OCAW* to extend the *Buchanan* ruling to FOIA cases, she, nevertheless, contends she has satisfied the requirements of *Buchanan* and *OCAW* by obtaining a requested *in camera* review, denial of the DOL’s motion for summary judgment and an order requiring the DOL to produce to her additional documents that had been wrongfully withheld. Prior to the December 2, 2005 Order, the DOL was not under judicial direction to produce any category of documents by any specified date to HULL. Once the court engaged in an *in camera* inspection and issued its follow up order for production, the DOL was under judicial direction to produce the nonexempt documents. HULL contends the order amounted to a “judicially sanctioned change in the legal relationship of the parties.” *Buckhannon*, 532 U.S. 605, 121 S.Ct. 1835. Thereafter, timely production of the nonexempt documents by the DOL could no longer be described as a “voluntary change in the defendant’s conduct.” *Id.* at 600, 121 S.Ct. 1835. To the contrary, HULL then had an “enforceable judgment,” *Id.* at 607 n. 9, 121 S.Ct. 1835, and if the DOL failed to comply, it faced the sanction of contempt.

There can be no question that this Court’s intervention changed the DOL’s behavior and altered the federal agency’s obligation’s to HULL, the FOIA requester. The action taken by this Court altered the status quo and vindicated HULL’s statutory right that her Complaint expressly

sought. That the Court altered the relationship between the parties is readily apparent. Just look at what happened when HULL subsequently filed yet another motion for summary judgment that the DOL initially opposed. Upon review of HULL's last legal brief filed on February 3, 2006, the DOL complied with HULL's request, again, producing the requested papers in an attempt to make the matter moot before there could be further judicial involvement. (See Exhibit 1, Declaration of Kennedy, p. 3 ¶ 9).

Bottom line, the DOL chose to game the system of complying with a legitimate FOIA request and this Court should not countenance that type of bad faith behavior by a federal agency. There should be an award of attorney's fees. Should the Court not award the requested fees and expenses, the result will be a perverse incentive for the DOL to, once again, play a game of 'cat and mouse' or "tug-of-war" in an attempt to wear down a less determined, but still deserving FOIA requester. No United States citizen should have to go through this much aggravation in order to get a federal agency to comply with a legitimate FOIA request. HULL adopts and incorporates herein the Declaration of Curtis L. Kennedy (Exhibit 1) and she asks for an order awarding fees of **\$27,000**, plus expenses in the amount of **\$570.00**.

**C. HULL is Deserving of An Award of Attorney's Fees Under the Tenth Circuit's Guiding Factors.**

Prior to *Buchanan*, the Tenth Circuit in the case of *Aviation Data Serv. v. FAA*, 687 F.2d 1319, 1321 (10th Cir. 1982) held that a district court should be guided by the following four factors when deciding to award attorney's fees in a FOIA case: "(1) the benefit to the public, if any, derived from the case; (2) the commercial benefit to the complainant; (3) the nature of the complainant's interest in the records sought; and (4) whether the government's withholding of the records had a reasonable basis in the law." HULL meets all of these factors.

First, the information being sought was for the benefit of thousands of Qwest Pension

Plan participants who are trying to police their pension plan, especially after witnessing unrecoverable disasters across the nation with respect to many defined pension plans. HULL was fulfilling her duty as the elected President of the AUSWR, a non profit organization of retirees charged with protecting the interests of retirees and their spouses. Second, there was no commercial benefit derived to HULL or anyone else. She did not seek the information for the purposes of exploiting the same for profit or other commercial gain. Third, HULL is a Qwest Pension Plan participant and she has every right to know what is going on with the trust fund that she depends upon. Fourth, the Court has amply seen the DOL's incredible effort in this case to obstruct HULL's efforts. HULL laid out a litany of examples of the DOL's bad faith behavior which the Court recited in its December 2, 2005 Order.<sup>3</sup> Notably, the DOL does not deny any of this.

No one factor espoused by the Tenth Circuit in *Aviation Data Serv. v. FAA* should be decisive. Yet, HULL satisfies the majority, if not all of the factors.

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<sup>3</sup> In the Courts December 2, 2005 Order, the Court notes the DOL does not dispute HULL's listing of disturbing agency behavior, as follows: (1) failing to respond to the initial FOIA request in a timely fashion; (2) issuing a blanket denial of all documents under Exemption 7(A) prior to Hull's filing of a complaint but only disclosing detailed information after Hull initiated her lawsuit; (3) denying all information under Exemption 7(A) as relevant to a pending investigation and then disclosing substantial information while the investigation was allegedly still pending; (4) initially withholding some information to protect the identity of an investigator and then providing the name of that investigator in a disclosed document; (5) ending the Qwest investigation April 7, 2005 but not informing Hull until May 18, 2005, after Hull's attorney had responded to a DOL motion rendered moot by the end of the investigation; (6) the absence of any documents in the file disclosed to Hull between May 2004 and April 2005, suggesting that the Qwest investigation in fact ended in May 2004 and that the DOL kept this investigation open for the sole purpose of denying documents as part of an ongoing investigation; and (7) belatedly discovering 17 documents pertinent to Hull's request only after Hull identified a discrepancy in the DOL's *Vaughn index*." (Docket 28, p. 18).

### III. CONCLUSION

For the aforesaid reasons and those reasons set forth in the Declaration of Curtis L. Kennedy submitted herewith as Exhibit 1, the Court should enter a judicial decree, pursuant to 5 U.S.C. Section 552(a)(4)(F) with a finding that the circumstances surrounding the DOL's withholding of documents responsive to HULL's FOIA request prior to and during this litigation raise questions about whether agency personnel acted arbitrarily or capriciously with respect to the withholding. Moreover, the Court should, pursuant to 5 U.S.C. Section 552(a)(4)(E) and 28 U.S.C. Section 1927, award HULL's counsel an award of attorney's fees in the amount of \$27,000, plus expenses of \$570.00.

DATED this 31<sup>st</sup> day of March, 2006.

s/ Curtis L. Kennedy  
Curtis L. Kennedy  
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Facsimile: 303-843-0360  
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*Attorney for Plaintiff Mary M. Hull*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31<sup>st</sup> day of March, 2006, a true and correct copy of the above and foregoing document was filed with the Clerk of the Court using the CM/ECF system. I also certified that on this 31<sup>st</sup> day of March, 2006, a true and correct copy of the above and foregoing document was delivered to Defendant's counsel of record via email as follows:

Michael C. Johnson, Esq.  
Assistant United States Attorney  
UNITED STATES ATTORNEY'S OFFICE  
1225 17<sup>th</sup> Street, 7<sup>th</sup> Floor  
Denver, CO 80202  
Tele: 303-454-0134  
Fax: 303-454-0404  
E-mail: [michael.johnson2@usdoj.gov](mailto:michael.johnson2@usdoj.gov)

Also, copy of the same was delivered via email to Plaintiff Mary M. Hull.

Mimi Hull  
678 Clarkson St.  
Denver, CO 80218-2302  
E-mail: [MM5Hull@msn.com](mailto:MM5Hull@msn.com)

s/ Curtis L. Kennedy  
Curtis L. Kennedy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. **04-cv-01264-LTB-PAC**

MARY M. HULL,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF LABOR,

Defendant.

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**DECLARATION OF CURTIS L. KENNEDY  
IN SUPPORT OF APPLICATION FOR AWARD OF  
ATTORNEY'S FEES AND REIMBURSEMENT OF EXPENSES**

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I, **Curtis L. Kennedy**, declare as follows:

**1.** I am a sole practitioner with offices in Denver, Colorado. I am counsel of record for Plaintiff Mary M. Hull. For more than twenty years, a significant part of my law practice has concentrated on assisting, either on a paid basis or pro bono basis, thousands of employees and retirees of the former Bell System, particularly the former U S WEST and the current Qwest Communications International, Inc. I played a very significant role in the forming and organization of the Association of U S WEST Retirees (**AUSWR**), participants of the Qwest Pension Plan.

**2.** I am submitting this declaration and application for an award of attorneys' fees in connection with services rendered in the above-entitled action and the reimbursement of expenses incurred by me in the course of this litigation. I performed professional services in connection with the following tasks and projects during this litigation as described in the table below and billed at my current customary hourly rate of **\$300.00**. **Exhibit 1**

3. This protracted litigation arose after a legitimate written demand under the Freedom of Information Act (FOIA) was fully refuted by the United States Department of Labor (DOL). Undisputed facts of this case are recited in the Court's December 2, 2005 Order entered in this case (See Docket 28).

4. I was retained by Mary "Mimi" Hull, President of AUSWR, to pursue a request for information pertaining to an alleged on-going investigation concerning the Qwest Pension Plan. Thousands of AUSWR members, plan participants in the pension plan wanted to know about the situation. The information to be obtained was going to be freely distributed to the retirees. Ms. Hull was fulfilling her duties as President of AUSWR to try to police the pension plan and learn more about what, if anything, was being accomplished by the DOL.

5. On March 2, 2004, I began the formal FOIA process by first telephoning Robert Webber, the Acting Regional Director for the DOL's Employee Benefits Security Administration in Kansas City and asked about the subject matter. During our telephone conversation, he told me he couldn't say anything about the status of the "investigation." When pressed to give me some clue as to when it might be finished, he told me the 'investigation' might never be ended, and that response seemed particularly odd to me. On March 3, 2004, I followed up with a letter faxed to Mr. Webber making a formal FOIA request. The next day, Mr. Webber faxed back to me a letter saying my FOIA request was denied in its entirety. Not one piece of paper was sent to me in response to the FOIA request.

6. On March 16, 2004, I exhausted the FOIA appeals process by sending a demand letter to the Office of the Solicitor in Washington, DC. Several weeks later, I followed up with a telephone call and was told the appeal was being 'processed,' nothing more. I followed up with several more telephone calls inquiring about the matter, each time being told the same

thing, that the appeal was being ‘processed’ and that no estimate could be given as to when the processing would be completed. On the 75<sup>th</sup> day after the appeal letter was sent to the Office of the Solicitor, I filed the Complaint in this Court on behalf of Mimi Hull and promptly served the DOL via the United States Attorney’s office. In response, the DOL filed a general denial Answer.

**7.** The case degenerated into one of ‘cat and mouse’ or a “tug-of-war.” Each time I pursued another step in the litigation process, the DOL release additional documents, repeatedly making ‘moot’ pending motions for summary judgment.

**8.** While Ms. Hull got nothing in response to her FOIA request prior to litigation, she ultimately received over 6,000 pages of responsive papers and this information was shared with thousands of Qwest retirees who, thereby, learned more about the operations, administration and financial status of their pension plan. There was no personal gain or commercial gain sought or obtained by either Ms. Hull or the retiree organization.

**9.** Several weeks after HULL filed her last legal brief on February 3, 2006, the DOL complied with Hull’s request, again, producing FOIA responsive papers before there could be further judicial involvement.

**10.** Near the end of February 2006, Assistant United States Attorney Michael Johnson, gave assurances to us that he had been told by the DOL that there was nothing else to produce responsive to Ms. Hull’s FOIA request other than several pages of what the DOL contends to be protected by the attorney-client privilege.

**11.** The following is a true and accurate statement of my hours expended and tasks performed for which I seek compensation. However, I have removed from the following a total of 35 hours I spent over the course of this case researching, reading numerous case decisions and

learning about FOIA and how to litigate alleged FOIA Exemptions, such as those raised by the DOL in this case. Since FOIA is not an area of law with which I had previous experience, I believed it my responsibility to winnow out my learning time and I have limited my request to the following:

**STATEMENT OF LEGAL SERVICES RENDERED**

12. Statement for period March 3, 2004, through March 31, 2006, for legal services rendered in connection with Freedom of Information Act (FOIA) claim on behalf of Claimant Mary M. Hull and Association of U S WEST Retirees (AUSWR):

<b><u>Date:</u></b>	<b><u>Description of Task Performed:</u></b>	<b><u>Hours:</u></b>
10.17.03	Tc with Board members [including Plaintiff Mary M. Hull] of the Association of U S WEST Retirees (AUSWR) re: requesting the DOL's report about the Qwest Pension Plan; Tc to Acting Regional Director Robert Webber in Kansas City to inquire about the same; draft follow-up letter faxed to Mr. Webber re: our discussion; draft report re: same and email to AUSWR Board members. (10:25-11:45)	N/C
02.24.04	Draft letter and fax to Acting Regional Director Robert Webber in Kansas City as reminder of October 17, 2003 letter; draft email note to AUSWR Board members re: same.	N/C
03.03.04	Draft and revise demand letter under Freedom of Information Act (FOIA) and fax and mail to Acting Regional Director Robert Webber in Kansas City; draft explanation letter and email to AUSWR Board members for distribution to Qwest Pension Plan participants.	0.9
03.09.04	Review March 4, 2004, FOIA denial letter from Kansas City DOL; draft comprehensive letter to AUSWR Board members explaining parameters of FOIA Exemption 7(A) and options available.	0.5

03.12.04	Review feedback from AUSWR Board members and consider next stage - appeal to Office of the Solicitor; research procedural issues on DOL website; Internet research on FOIA appeals, especially DOL agency matters. (1:15-2:25)	2.1
03.15.04	Draft and revise and final FOIA appeal letter to DOL Office of the Solicitor.	0.8
03.16.04	Draft status report to AUSWR Board members re: appeal letter sent to DOL Office of the Solicitor.	0.2
04.15.04	Tcs to DOL Office of the Solicitor; Tc with Ms. Shteir-Dunn; review email confirmation from Ms. Dunn and report same to AUSWR Board members.	0.2
05.03.04	Review April 20, 2004, dated letter (mailed on April 30, 2004) from Solicitor's Office acknowledging receipt of the March 16, 2004 and draft email note to AUSWR Board members.	0.1
05.19.04	Draft email letter to April Nelson, Director FOIA Appeals Unit to inquire about status of FOIA.	0.2
05.20.04	Review April 20 email note from April Nelson and draft report re: same to AUSWR Board members.	0.1
06.16.04	Tc with Ms. Hull about filing FOIA lawsuit; review email note from Ms. Hull re: same.	0.2
06.17.04	Research 10 <sup>th</sup> Circuit and District of Colorado case law on FOIA claims; draft, revise and final complaint under FOIA consider litigation issues. (12:40-4:20)	3.3
06.18.04	Final work on FOIA Complaint, Summons and filing papers; file with Clerk of the Denver Federal Court; serve Summons and Complaint on U.S. Attorney's Office. (3:10-5:30)	2.3
06.19.04	Draft status report for AUSWR Board members for distribution to all known Qwest Pension Plan participants; Tc with Ms. Hull re: filing and expected events.	0.4
06.21.04	Review June 16, 2004, letter denying FOIA appeal from the DOL Office of the Solicitor; draft report re: same to AUSWR Board members for full distribution; Tc with Ms. Hull re: same.	0.4
07.18.04	Review the July 15, 2004, "Answer" filed by U.S. Attorney's Office for the DOL; draft report re: same to AUSWR Board members for full distribution.	0.5

07.28.04	Review July 19 "Order of Reference to United States Magistrate Judge" and July 20 "Minute Order for Scheduling/Planning Conference," and draft report re: same to AUSWR Board members for full distribution.	0.3
08.27.04	Draft motion to vacate scheduling/planning conference and motion for <i>in camera</i> inspection and fax same to U.S. Attorney Michael Johnson for consideration; draft note to AUSWR Board members re: same.	0.7
08.31.04	Draft email memo re: FOIA matter to Ms. Hull; review email note re: same from Ms. Hull.	0.1
09.27.04	Draft reminder note to U.S. Attorney Michael Johnson; Tc with Ms. Hull re: status.	0.2
09.28.04	Review September 28 letter from U.S. Attorney Michael Johnson declining to consent to proposed motion for <i>in camera</i> inspection; Tc with Ms. Hull re: same.	0.1
10.22.04	Draft proposed Scheduling Order, revise same and fax to U.S. Attorney Michael Johnson for his input of DOL's section and proposed changes. (10:40-12:30)	1.5
	Draft update report to AUSWR Board members re: proposed scheduling order and conference before Magistrate Judge Schlatter.	0.2
10.25.04	Review October 19, 2004, dated letter from DOL Co-Counsel for Administrative Law Miriam McD. Miller advising the "Department of Labor is prepared to release the disclosable records from the ongoing investigation of the Qwest Pension Plan, which are the subject of the captioned case brought under the Freedom of Information Act (FOIA). . ."; Tc with Jennifer Toth at DOL's main office; draft and final response letter confirming agreement to pay estimated costs; draft report re: same to AUSWR Board members for full distribution; Tc re: same with Ms. Hull.	0.7
11.05.04	Tc with U.S. Attorney Michael Johnson re: upcoming Scheduling Conference before Magistrate Judge Schlatter; review fax received from Mr. Johnson's office on DOL's insert and changes to proposed order; Tc with Ms. Hull re: same	0.5
	Draft unopposed motion proposing to suspend entry of Scheduling Order and fax to Denver Federal Court.	0.3

11.08.04	Conference with Ms. Hull; Attend Scheduling Conference before Magistrate Judge Schlatter and advise of DOL's agreement to send documents; brief discussion with U.S. Attorney Michael Johnson on Ms. Hull's proposal for payment of reasonable attorney's fees and the filing fee.	0.7
11.16.04	Review time records for work performed in this case; winnow out time; draft application for fees and submit to U.S. Attorney Michael Johnson and DOL Miriam McD. Miller; draft email note to Mr. Johnson; draft update re: same for Ms. Hull; follow-up Tc with Ms. Hull re: same and process going forward.	1.2
12.01.04	Draft reminder letter to U.S. Attorney Michael Johnson and DOL Miriam McD. Miller re: what's happening? Where are the promised documents?; draft email update to Ms. Hull and Tc with Ms. Hull re: same old problem. . .	0.3
12.02.04	Review December 2, 2004 faxed letter from DOL Attorney Miriam McD. Miller re: 4,275 pages of promised documents to be released; draft email note re: same to Ms. Hull and AUSWR Board members re: DOL's requested payment of \$626.25; Tc with Ms. Hull re: same; draft response letter to DOL Attorney Miriam McD Miller confirming payment sent today.	0.3
12.09.04	Prepare for and attend "status conference" before Magistrate Judge Edward Schlatter; after conference discussion with U.S. Attorney Michael Johnson re: DOL's plans to send me requested papers; Tc with Ms. Hull to report to her what happened today; draft report and sent to Ms. Hull and AUSWR Board.	1.5
12.24.04	Review approximately 4,000 pages of documents received from DOL and organize same to determine what is likely missing from FOIA request. (11:10-1:30)	1.5
01.05.05	Continue review of 4,000 pages of documents received from DOL to determine what is likely missing.	0.8
01.17.05	Draft extensive report to Ms. Hull and AUSWR Board on findings from review of 4,000 pages produced by the DOL; review feedback email from Ms. Hull and AUSWR Board members; draft letter to U.S. Attorney and DOL attorney confirming retirees request a <u>Vaughn</u> index.	1.2

01.24.05	Review 31 pages fax from DOL and U.S. Attorney consisting of <u>Vaughn</u> index; draft report re: same to Ms. Hull and AUSWR Board members; review applicable case law on seeking award of attorney's fees; final report and send to Ms. Hull and AUSWR Board. (2:20-3:45 and 6:20-7:55 p.m)	2.7
02.08.05	Prepare for and participate in "status conference" conducted by Magistrate Judge Edward Schlatter; draft report of proposed compromise given to U.S. Attorney to send to Ms. Hull and AUSWR Board members and explain to retiree clients difficulties due to Supreme Court's 5-4 decision in <i>Buckhannon Board and Care Home, Inc., et al v. West Virginia Department of Health and Human Resources, et al.</i>	1.5
03.01.05	Tc (lengthy) with U.S. Attorney Michael Johnson and DOL's Jennifer Toth (Office of the Solicitor) re: prevailing party concept, plans to file a motion for summary judgement and issues concerning the <u>Vaughn</u> index.	0.5
	Several Tcs with Ms. Hull about direction to go and procedure.	0.3
04.05.05	Review and analyze, checking case law cited in DOL's April 4 filed Motion for Summary Judgment (Docket No. 13), and consider opposition, noting issues and legal argument to make (6:40-10:10 p.m.)	3.3
04.06.05	Draft extensive update report to Ms. Hull and AUSWR Board members re: the Summary Judgment filing made by the DOL; conduct additional research and drafting of opposition brief and proposed motion requesting an in camera review. (10:25-1:05)	2.5
	Half day writing brief in opposition to DOL's motion for summary judgment; research FOIA related case law and judicial rulings on requests for <i>in camera</i> review to contest federal agency's contention of applicable FOIA exemptions (11:40-4:10).	4.0
04.19.05	Continue work on brief in opposition to DOL's motion for summary judgment; continue research on standard for getting a judicial <i>in camera</i> review under FOIA; draft update report to Ms. Hull on my progress. (12:10-3:45)	3.5

04.20.05	Complete work on brief in opposition to DOL's motion for summary judgment and final paper and submit to Clerk of the Court; draft update report to Ms. Hull and AUSWR Board members re: DOL's emphatic argument that " <i>public access to documents revealing the status of the investigation could trigger public interference with the investigation, and therefore hamper its progress.</i> " (12:05-1:30)	1.5
05.06.05	Tc (voice message) from U.S. Attorney Michael Johnson and review of his filed motion requesting an extension of time; Tc with Ms. Hull re: same.	0.2
05.17.05	Tc with U.S. Attorney Michael Johnson and DOL Jennifer Roth on additional reply brief to be filed by DOL regarding alleged FOIA Exemption 7A and discussion re: end of 'ongoing investigation;' Tc with Ms. Hull re: same and how we proceed from here. (12:25-1:10).	0.7
5.20.05	Review and analyze the reply summary judgment brief papers received from DOL, review and analyze DOL's response to petition for <i>in camera</i> review; review of the thousands of pages produced by DOL, noting missing information; and draft short email report re: same to Ms. Hull. (1.55-3:35)	1.5
06.03.05	Draft update report to Ms. Hull and AUSWR Board members with explanation of April 7, 2005 closure letter from EBSA arm of DOL to Qwest on \$83,321.00 expenses improperly charged to Qwest Pension Plan.	0.8
07.07.05	Review June 27, 2005 letter from DOL Regional Director Steven R. Eischen reporting that upon his "re-examination of documents that were previously [FOIA request] denied" there has been a change in position at the DOL and documents will be released; review and analyze approximately 1,400 pages sent to me; draft extensive report re: same to Ms. Hull and AUSWR Board members. (7:25-9:10 p.m.).	1.5
07.14.05	Quick overview and study of 2 <sup>nd</sup> motion for summary judgment filed on July 11 by DOL (with affidavits) [Docket No. 23].	0.6
07.25.05	Review and analyze 2 <sup>nd</sup> motion for summary judgment filed on July 11 by DOL (with affidavits) [Docket No. 23] and begin drafting opposition brief and request for an <i>in camera</i> review.	0.8
07.27.05	Review and analyze DOL's <u>Vaughn</u> index and determine likely missing paperwork.	0.6

07.28.05	Drafting of brief in opposition to DOL's motion for summary judgment; continue research for supportive case law to get judicial <i>in camera</i> review under FOIA; draft update report to Ms. Hull on my progress. (10:15-3:35)	5.1
07.29.05	Tc with Ms. Hull re: her Affidavit to file with our papers; revise and final her Affidavit; meeting with Ms. Hull to discuss FOIA response papers received from DOL and have her execute the Affidavit.	0.9
	Final drafting and submission of Plaintiff's Response [Docket 24] in Opposition re Docket 23 Defendant's July 11, 2005 Motion For Summary Judgment and Petition For <i>In Camera</i> Review with Rule 56(f) Affidavit by Plaintiff Hull. (7:10-9:20 and (2:05-4:55).	4.0
08.16.05	Review another motion for more time [Docket 25] filed by DOL for permission to file another legal brief; draft update report re: same to Ms. Hull and AUSWR Board members, with advisement that DOL reports " <i>counsel was informed on the morning of August 15, 2005, that defendant has located a few additional documents which appear to be responsive to plaintiff's request.</i> "	0.5
08.18.05	Draft extensive update report to AUSWR general members to be posted at website on status of the <i>Hull</i> FOIA case with explanation of further legal action to be carried out.	0.8
08.22.05	Review and analyze latest 21 page legal brief filed by DOL on August 18, 2005 [Docket 27] and draft update report re: same to Ms. Hull and AUSWR Board members. (1:50-3:00)	1.1
12.02.05	Review and analyze December 2 ruling [Docket 28] by Chief Judge Babcock granting request for <i>in camera</i> review; and begin draft explanation re: same to Ms. Hull, AUSWR Board and general membership to be posted at website; Tcs with Mimi Hull and Nelson Phelps re: outcome and ruling. (1:20-2:50).	1.5
12.07.05	Revised and final report to send to Ms. Hull, AUSWR Board and general retiree membership; Tc with Ms. Hull re: same.	0.2
12.20.05	Draft and revise Hull's Motion For Summary Judgment re: unfinished issues and to set date for <i>in camera</i> review of withheld documents. (1:40-3:35)	1.8

12.21.05	Draft Affidavit for Ms. Hull; Tc with Ms. Hull re: same; revise and final her Affidavit; meeting with Ms. Hull to explain and have her execute Affidavit.	0.6
	Final work on Hull's Motion For Summary Judgment and e-filing of same [Docket 29] today; draft follow-up email note to Ms. Hull re: same; draft email note re: same to U.S. Attorney Michael Johnson. (7:30-9:15 a.m and 3:10-5:15 p.m.)	3.0
12.23.05	Review December 21, 2005 letter from U.S. Attorney's office to Chief Judge Babcock re: transmittal of documents for his <i>in camera</i> review; draft report re: same to Ms. Hull.	0.2
01.03.06	Review December 27, 2005 letter from U.S. Attorney Michael Johnson together with 26 pages of additional papers now being released by the DOL; close analysis of information provided in the 26 pages; draft extensive report re: same to Ms. Hull and AUSWR Board members.	0.9
	Review December 27, 2005 letter from DOL Attorney Miriam McD Miller together with Qwest Pension Plan service agreements not being released; draft additional update report re: same to Ms. Hull and AUSWR Board members.	0.7
01.10.06	Review and analyze DOL's January 10, 2006 filed brief [Docket 30] in opposition to Hull's December 21, 2005 Motion for Summary Judgment arguing that the DOL has since complied making the motion moot; draft extensive update re: same to Ms. Hull and AUSWR Board members. (1:15-3:10)	1.8
01.11.06	Review and analyze DOL's January 11 2006 filed [Docket 31] Motion for Summary Judgment with Respect to Certain Electronic Documents and Service Contracts; draft extensive update re: same to Ms. Hull and AUSWR Board members. (2:15-3:05)	0.8
01.13.06	Review Chief Judge Babcock's Order entered today [Docket 32] on his <i>in camera</i> inspection and his order requiring the DOL to produce papers to retirees; draft update report on same to Ms. Hull and AUSWR Board members.	0.9
01.28.06	Review papers DOL sent to me in compliance with Chief Judge Babcock's order to produce the same; draft extensive report on findings and significance of papers to Ms. Hull and AUSWR Board members; Tc with Ms. Hull re: same.	0.8

02.03.06	Research case law, draft, revise and final Hull's Response in Opposition re [Docket 31] Defendant's January 11, 2006 Motion For Summary Judgment and Petition for a 2 <sup>nd</sup> <i>In Camera</i> review, together with Affidavit for Ms. Hull; meeting with Ms. Hull to explain everything and have her execute the affidavit. (8:10-12:15 and 3:15-3:35)	5.2
02.14.06	Review Minute Order [Docket 35] scheduling status/settlement conference before Magistrate Judge Coan on March 24, 2006; draft update report re: same to Ms. Hull and AUSWR Board members; Tc with Ms. Hull on our settlement position.	0.2
02.15.06	Review Order by Chief Judge Babcock [Docket 36] on various matters; draft update report to Ms. Hull.	0.1
02.21.06	Tc with U.S. Attorney Michael Johnson on DOL's plans to file another legal brief reporting compliance with order to produce records and final matters to be decided; draft update report re: same to Ms. Hull.	0.2
02.23.06	Review latest filing by DOL [Docket 37] reporting a change in mind and plans to release six of nine additional responsive documents; draft update report re: same to Ms. Hull and AUSWR Board members.	0.5
02.27.06	Review February 24, 2006 letter from Dol with packet of additional FOIA responsive papers; draft update report re: same to Ms. Hull and AUSWR Board members.	0.4
03.20.06	Prepare for status/settlement conference and draft proposal for settlement to Magistrate Judge Coan and send same to U.S. Attorney Michael Johnson.	0.5
03.24.06	Attend status/settlement conference before Magistrate Judge Coan; and after conference explanation discussion with Ms. Hull and AUSWR Executive Director Nelson Phelps. (1:20-3:00).	1.5
03.31.06	Draft, revise and final Motion for Judicial Decree and Award of Attorney's Fees and Expenses, Declaration of Curtis L. Kennedy in support of same. (9:30-3:20).	5.0
	<b>Total Billable Hours:</b>	90
	<b>Total Time Charges: 90.0 hours @ \$300 \$27,000.00</b> (March 3, 2004 to March 31, 2006)	

**13.** There was a total of **\$570.00** of costs and expenses during this litigation consisting of: 1) \$150.00 Denver Federal Court filing fee, plus making a full copy set of all documents produced by the DOL, approximately 6,000 pages @ \$.07 per page, or \$420.00.

**14.** About two weeks ago, I provided United States Attorney Michael Johnson with the aforesaid statement reflecting my time prior to the Court's status/settlement conference on March 24, 2006. In addition, months ago, I gave Mr. Johnson a copy of my resume and listing of my extensive federal court experience and legal service provided to U S WEST and Qwest retirees and I do not believe there is any dispute in that regard.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31<sup>st</sup> day of March, 2006 at Denver, Colorado.



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