

Emily T. Prince, Esq.  
<http://www.emily-esque.com>

James M. Kovakas  
Freedom of Information/Privacy Act Office  
Civil Division  
Department of Justice  
Room 7304, 20 Massachusetts Avenue, N.W.  
Washington, DC 20530-0001

*Submitted via E-mail*

Dear Mr. Kovakas:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I request that a copy of the following documents (or documents containing the following information) be provided to me:

1. Any and all briefs, motions, or other similar filings before any court or administrative proceeding, dated after April 20, 2012, in which the Department asserted that Title VII's prohibition against discrimination based on sex does not encompass gender identity *per se* (including transgender discrimination).
2. Any and all documents closing or terminating any complaint, litigation, claim, or similar matter, dated after April 20, 2012, in which the Department asserted that Title VII's prohibition against discrimination based on sex does not encompass gender identity *per se* (including transgender discrimination).
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I request a waiver of all fees for this request.

**Specific explanation for waiver of fees:**

- The subject matter of the requested records themselves must specifically concern identifiable "operations or activities of the government."

The requested records pertain to the Department of Justice's role enforcing Title VII, and concern the operations or activities of the Department in that capacity. Specifically, the requested records address

the Department of Justice's enforcement of Title VII in the years between the decision against the Department in the EEOC decision *Macy v. Holder*, Appeal No. 0120120821 (EEOC April 20, 2012) and the Attorney General's December 15, 2014 memorandum (December 15 Memo) stating that the Department "will no longer assert that Title VII's prohibition against discrimination based on sex does not encompass gender identity *per se* (including transgender discrimination)."

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- The disclosure must contribute to the "understanding of the public at large," as opposed to that of the individual requester or a narrow segment of interested persons. With regard to this element, requesters should address with particularity and in detail the requester's subject matter expertise and intentions, ability, and methods of disseminating information to the public.

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On Thursday, December 18, 2014, the Attorney General described the December 15 Memo as “ensur[ing] that the protections of the Civil Rights Act of 1964 are extended to those who suffer discrimination based on gender identity, including transgender status. This will help foster fair and consistent treatment for all claimants.”

This raises the question: how were claimants treated between the issuance of the *Macy* decision, holding that discrimination on the basis of sex included discrimination on the basis of gender identity, such as discrimination against transgender individuals? The public at large has no ability to determine the answer to that important public policy question other than through disclosure of the requested information. As discussed above, the requested information is the best available evidence to determine whether claimants received, in the words of the Attorney General, “fair and consistent treatment” after *Macy* and before the December 15 Memo. The disclosure will therefore contribute significantly to public understanding of the government’s operations in enforcing Title VII.

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Thank you for your consideration of this request. Please contact me as soon as possible should you have any questions. I look forward to your reply within 20 business days, as the statute requires.

Sincerely,

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Emily T. Prince, Esq.

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<http://www.emily-esque.com>

Nelson D. Hermilla, Chief  
FOIA/PA Branch  
Civil Rights Division  
Department of Justice  
Room 311, NALC Building  
Washington, DC 20530

*Submitted via E-mail*

Dear Mr. Hermilla:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I request that a copy of the following documents (or documents containing the following information) be provided to me:

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Emily T. Prince, Esq.

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<http://www.emily-esque.com>

Susan B. Gerson, Acting Assistant Director  
FOIA/Privacy Unit  
Executive Office for United States Attorneys  
Department of Justice  
Room 7300, 600 E Street, N.W.  
Washington, DC 20530-0001

*Submitted via E-mail*

Dear Ms. Gerson:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I request that a copy of the following documents (or documents containing the following information) be provided to me:

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Sincerely,

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Emily T. Prince, Esq.

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<http://www.emily-esque.com>

Dorothy Lee, Paralegal Specialist  
Office of Justice Programs  
Department of Justice  
Room 5400, 810 7th Street, N.W.  
Washington, DC 20531

*Submitted via E-mail*

Dear Ms. Lee:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I request that a copy of the following documents (or documents containing the following information) be provided to me:

10. Any and all briefs, motions, or other similar filings before any court or administrative proceeding, dated after April 20, 2012, in which the Department asserted that Title VII's prohibition against discrimination based on sex does not encompass gender identity *per se* (including transgender discrimination).
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Sincerely,

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Emily T. Prince, Esq.

Emily T. Prince, Esq.  
<http://www.emily-esque.com>

Bette Farris, Supervisory Paralegal  
Office of Legal Counsel  
Department of Justice  
Room 5515, 950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

*Submitted via E-mail*

Dear Ms. Farris:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I request that a copy of the following documents (or documents containing the following information) be provided to me:

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Emily T. Prince, Esq.

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James K. Davis  
FOIA Coordinator  
Office of the Solicitor General  
Department of Justice  
950 Pennsylvania Avenue, N.W., Room 6627  
Washington, DC 20530-0001

*Submitted via E-mail*

Dear Mr. Davis:

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The disclosure is meaningfully informative in relation to the subject matter of the request: the Department of Justice's enforcement of Title VII. Item 1 will be meaningfully informative as to cases where the Department asserted that Title VII did not encompass gender identity *per se* (including discrimination against transgender individuals). Item 2 will be meaningfully informative as to situations where the Department, relying upon that same assertion, declined to move forward with any legal claim. Item 3 will be meaningfully informative as to the guidance provided to Department staff and officials with respect to the assertion. Each of these items will provide the public with meaningful information regarding the impact of the Department's extended delay between the EEOC decision in *Macy* and the December 15 Memo, as well as the expected impact of the December 15 Memo's new guidance. The disclosed information is the best available evidence to ascertain those impacts.

- The disclosure must contribute to the "understanding of the public at large," as opposed to that of the individual requester or a narrow segment of interested persons. With regard to this element, requesters should address with particularity and in detail the requester's subject matter expertise and intentions, ability, and methods of disseminating information to the public.

As a regulatory attorney with years of experience in drafting, promulgating, and enforcing Federal guidance and regulations, including contentious regulations with net societal benefits exceeding \$1 billion and guidance regarding complicated statutes dating back to 1907, I have the subject-matter expertise necessary to discuss the briefs, closing letters, guidance, rules, or similar content disclosed by the Department of Justice and the impact of the disclosed information on public policy. As an activist in the transgender community focusing on regulatory affairs, I have engaged in substantial activities to address continued discrimination on the basis of gender identity within the Federal government, including several meetings with the Office of Information and Regulatory Affairs concerning access to transition-related health care. My interpretations of Federal actions have been reported in the *Federal Times*, the *Advocate*, and most recently in *BuzzFeed*, discussing the Department of Labor's interpretations of its prohibition on discrimination on the basis of gender identity in employment by Federal contractors.

Upon receipt of the disclosed information, the entirety will be posted to my personal site, <http://www.emily-esque.com>, with analysis to follow concurrently or shortly thereafter. As the disclosure will be of interest to the public at large, I will be in communication with several journalists to discuss the disclosures and my analysis of the disclosed information in order to contribute to the public's understanding of the Department of Justice's enforcement of Title VII.

- The disclosure must “contribute significantly” to public understanding of government operations or activities.

On Thursday, December 18, 2014, the Attorney General described the December 15 Memo as “ensur[ing] that the protections of the Civil Rights Act of 1964 are extended to those who suffer discrimination based on gender identity, including transgender status. This will help foster fair and consistent treatment for all claimants.”

This raises the question: how were claimants treated between the issuance of the *Macy* decision, holding that discrimination on the basis of sex included discrimination on the basis of gender identity, such as discrimination against transgender individuals? The public at large has no ability to determine the answer to that important public policy question other than through disclosure of the requested information. As discussed above, the requested information is the best available evidence to determine whether claimants received, in the words of the Attorney General, “fair and consistent treatment” after *Macy* and before the December 15 Memo. The disclosure will therefore contribute significantly to public understanding of the government’s operations in enforcing Title VII.

- The request must not involve any “commercial interest of the requester,” or the public interest in disclosure must be greater in magnitude than the requester’s commercial interest.

I have no commercial interest in the material.

Thank you for your consideration of this request. Please contact me as soon as possible should you have any questions. I look forward to your reply within 20 business days, as the statute requires.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Prince". The signature is fluid and cursive, with a long horizontal flourish at the end.

Emily T. Prince, Esq.

Emily T. Prince, Esq.  
<http://www.emily-esque.com>

Catherine Poston  
Attorney Advisor  
145 N Street NE  
Suite 10W.121  
Washington, D.C. 20530

*Submitted via E-mail*

Dear Ms. Poston:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I request that a copy of the following documents (or documents containing the following information) be provided to me:

19. Any and all briefs, motions, or other similar filings before any court or administrative proceeding, dated after April 20, 2012, in which the Department asserted that Title VII's prohibition against discrimination based on sex does not encompass gender identity *per se* (including transgender discrimination).
20. Any and all documents closing or terminating any complaint, litigation, claim, or similar matter, dated after April 20, 2012, in which the Department asserted that Title VII's prohibition against discrimination based on sex does not encompass gender identity *per se* (including transgender discrimination).
21. Any and all documents establishing formal guidance, rules, or similar content, dated after April 20, 2012, in which the Department asserted that Title VII's prohibition against discrimination based on sex does not encompass gender identity *per se* (including transgender discrimination).

I request that the documents be produced in electronic format, preferably conveyed by e-mail. If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all severable portions of otherwise-exempt material. I reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I request a waiver of all fees for this request.

**Specific explanation for waiver of fees:**

- The subject matter of the requested records themselves must specifically concern identifiable "operations or activities of the government."

The requested records pertain to the Department of Justice's role enforcing Title VII, and concern the operations or activities of the Department in that capacity. Specifically, the requested records address the Department of Justice's enforcement of Title VII in the years between the decision against the

Department in the EEOC decision *Macy v. Holder*, Appeal No. 0120120821 (EEOC April 20, 2012) and the Attorney General's December 15, 2014 memorandum (December 15 Memo) stating that the Department "will no longer assert that Title VII's prohibition against discrimination based on sex does not encompass gender identity *per se* (including transgender discrimination)."

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Sincerely,

A handwritten signature in black ink, appearing to read 'E. Prince', with a stylized, cursive script.

Emily T. Prince, Esq.