47 Four Oaks Road
Bedminster, NJ 07921
November 4, 2015

Lisa Terry—General Counsel
Office of the Special Counsel
1730 M Street N.W. Suite 218
Washington, D.C. 20036-4505

Dear Ms. Terry:

I am writing to appeal a decision of your FOIA section in the Office of Special Counsel.

On March 5, 2014, my wife and I requested copies of what has been described as "one 13-page draft document" which was the final summary of an investigation of our separate but joined cases---MA-11-2436 and MA-11-3151. This report was completed near the end of January 2013, it was presented to the National Park Service and the Department of Interior; and it resulted in a Settlement Agreement being signed November 27, 2013---ten months later.

We received a letter from your FOIA Public Liaison officer, Dawn R. Kral, dated October 20, 2015 which after 20 months denied our FOIA request.

As instructed in her letter, we are appealing the denial to you because of the following reasons:

1. According to 5 USC 552a cited by Ms. Kral, you can exclude "investigatory material compiled for law enforcement purposes." But the draft document we would like to see is not "investigatory material" per se and it wasn't compiled for "law enforcement" purposes; it was the summary of an investigation or the concluding report of an investigation. Its purpose was not to reveal who said what and when, but to summarize several months of conversations and statements and determine whether a PPP ("Prohibited Personnel Practice") had occurred.

2. In her letter of denial, Ms. Kral wrote that you could withhold documents according to 5 USC 552 (b) exception 5 which "protects from disclosure material that is normally privileged in civil litigation pursuant to one or more legal privileges; and then she cites 5 USC 552 (b) (5). But our case was not a civil case, and consequently we were not engaged in civil litigation. Had our case gone onto a civil court, or to the MSPB, it would have become a civil case…..but that never happened. As indicted in the final Settlement Agreement with the NPS, we never got beyond making "claims" of a PPP.

3. Ms. Kral also cites 5 USC 552 (b) (5) (C) which pertains to "law enforcement records whose disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy."" The "13-page draft document" that we would like to see is not a law enforcement record; it is the summary of several months of conversations and letters to determine whether our "claims" had any validity.

In the end, the NPS and Department of Interior did sign a Settlement Agreement…..but not as the result of a civil case, or as the adjudication of litigation, or in response to any law enforcement ruling. In fact, in Section 10 of the Settlement Agreement, the NPS and Department of Interior clearly stated just the opposite:

> "This Settlement Agreement shall not in any way constitute an admission or concession from the Agency that its employees, or other employees of the Federal government, committed any harmful procedural

error, engaged in any prohibited personnel practice, treated Complainants in a discriminatory or retaliatory manner, or violated any Federal or State laws, rules, regulations, or policies and any such actions are specifically and individually denied. This Settlement Agreement is entered into by complainants and the Agency for the purpose of compromising disputed claims and avoiding the expenses and risks of litigation, not for the purpose of assigning blame or validating the claim(s) made in the Complaints, and/or other pending or contemplated claims dismissed, waived, withdrawn, and released in accordance with the terms of this Settlement Agreement."

Essentially, the NPS and Department of Interior confirmed that there was no actual litigation. Instead, they confirmed that they simply were trying to avoid "the expenses and risks of litigation".

Furthermore, since the National Park Service and Department of the Interior state that there was no wrong-doing of any kind, then any claim that the release of the "13-page draft document" would "constitute an unwarranted invasion of personal privacy" seems to be without merit and unjustified.

To be sure, what happened, how it happened, and how it was resolved have all been posted already on our website at www.schundler.net.

And Sara and I obviously have no hesitation in confirming that you can release to us anything that is in our file---including that 13-page document. And we don't think there is anything in anyone else's files which would be revealed in the 13-page document and which would constitute an "unwarranted invasion of personal privacy."

Finally, you may be interested in why we would like this "13-page draft document" which summarizes our claims and was prepared to by Anne Glass of your office. In a word, we want to post it as the final conclusion of our experiences---both the good and the bad. We want others to see that without lawyers and without litigation, the process of resolving claims of prohibited personnel practices does work sometimes and that the Office of Special Counsel can help.

We look forward to your response!

/s/

Bruce E. Schundler

/s/

Sara F. Schundler

CC: Ms. Dawn R. Kral
FOIA Public Liaison