



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON DC 20310-0111



REPLY TO
ATTENTION OF

February 29, 2000

CHALLENGE Number 2000-0107

Dear

This responds to your challenge to the Army's 1999 FAIR Act inventory. Your challenge concerns one activity.

Standing. As an employee within the meaning of 5 U.S.C. 2105 performing historian and museum functions included under Function Code Y200, "Commanders and Support Staff," you are an "interested party" who is qualified to submit challenges of inclusion or exclusion to the Army list. Other issues raised in your challenge are not relevant to FAIR Act determinations.

Date of Receipt. I received your Challenge on February 1, 2000.

Historian and Museum Services, Function Code Y200

Activity Challenged. You have challenged the inclusion on the list of historian and museum services performed under the Function Code Y200, "Commanders and Support Staff." This work includes the acquisition of historical materials from private persons, collection manager, archivist, teaching, program development and advisory functions within Function Code Y200 for Historian and Museum Services, as defined in the functional definition at the Army web site, <http://www.asamra.army.pentagon.mil/fair>, which is hyperlinked to the DOD FAIRNET website at <http://gravity.lmi.org/DODFAIR>.

Decision. I have determined that the activities included under Function Code Y200 pertaining to Historian and Museum Services are not inherently Governmental. Therefore, they are properly included in the Army's FAIR Act list.

Rationale. The FAIR Act list includes only functions and activities that, in the judgment of the head of the agency, are not inherently Governmental. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments in making decisions for the Government. The purpose of the challenged functions and activities listed above is to perform historical research, advise commanders on historical matters, acquire and safeguard historical materials and other historian and museum-related functions. Historian and museum functions, including

those involving the hand-receipting of property and acquisition of property do not entail substantial discretion or value judgments in applying Government authority or in making decisions for the Government.

Your challenge contends that these functions should be considered inherently Governmental because of 16 U.S.C. 431, 433 and 470 and regulations restricting competition of curatorial, historical research and management functions. The statutes cited above provide authority for the President to declare by proclamation that a site is a historic landmark, provide authority for the acquisition of such historical properties from private sector, provide for criminal penalties for vandalizing historical properties, and express a congressional finding on the importance of historical preservation. These statutes do not characterize historian and museum functions as inherently Governmental. AR 870-20 pre-dates the FAIR Act. Another consideration is that the historian and museum functions under challenge are included in current A-76 studies.

Significance. The significance of a non-inherently Governmental designation for an activity is discussed at the Army web site hyperlinked to the DOD FAIRNET at <http://www.asamra.army.pentagon.mil/fair>. In some cases there may be legal impediments to contracting activities designated as non-inherently Governmental, as reflected in statutes, international agreements, and restrictions on contracting for personal services. In other cases, the Army may consider it imprudent to contract activities designated as non-inherently Governmental based on risk assessment and national security considerations, or enlightened human resources management. Such a determination has not been made at the present time in the case of the activities included within this challenge.

Scope. The Army's functions are defined by its unique roles and missions. Therefore, the Army's FAIR Act decisions may not be extended to other agencies with different missions based solely on function code titles. The Army FAIR Act Inventory included civilian positions performing functions within the Army infrastructure and within Civil Works. The FAIR Act Inventory excluded all contractor positions and all military positions, as well as all personnel performing functions in the following mission areas within the Army: Major Theater of War, Smaller Scale Contingency, Base Engagement Force, Strategic Reserve, Domestic Support, or Homeland Defense.

Appeal Rights. You have the right to appeal my decision since it is adverse to your Challenge. The specific procedures for submitting an appeal are set forth at the enclosure to this decision.



Patrick T. Henry
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Enclosure

Appeal Rights

Appeals must be in writing and transmitted by United States mail, express mail delivery or other similar service, or facsimile transmission, or may be delivered in person only if the person making the delivery is authorized access to the Pentagon. (To assist in processing, appellants may mark "FAIR Appeal" on the envelope.) Appeals must be submitted to the office listed below within 10 working days of the date on which the challenger received the decision denying or rejecting the challenge:

Department of the Army
Office of the Assistant Secretary
Manpower and Reserve Affairs
ATTN: SAMR-FMMR-FAIR
111 Army Pentagon
Washington, D.C. 20310-0111
Fax: 703-614-6833