



Environmental Law Center
American Tradition Institute

REQUEST UNDER THE FREEDOM OF INFORMATION ACT

April 2, 2012

National Freedom of Information Officer
U.S. EPA, Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
BY ELECTRONIC MAIL

By E-mail: hq.foia@epa.gov

Dear EPA FOIA Officer,

On behalf of the American Tradition Institute (ATI), a non-profit public policy institute, please provide copies of all records meeting the description which follows and which were sent or received by or are in the possession of staff working now or during the period covered by this Request in or for the following five Offices at EPA HQ:

**Office of Associate Administrator for Policy,
Office of Associate Administrator for External Affairs and Environmental
Education,
Office of Associate Administrator for Air and Radiation
Office of the Deputy Administrator, and/or
Office of the Assistant Administrator for Air and Radiation**

Records Sought -- Please provide us copies of any email sent from or to (including as cc:) the Offices identified above and containing the word "Sierra" in either the body, subject line or any domain name in the email.

Documents responsive to this Request will have been dated, sent or received by the identified EPA HQ offices between January 21, 2009 and the date EPA performs the relevant, respective search(es) in response to this Request, inclusive.

Scope of Request

Please identify and inform us of all responsive or potentially responsive documents within the statutorily prescribed time, and the basis of any claimed exemptions or privilege and to which specific responsive or potentially responsive document(s) such objection applies.

Further, please inform us of the basis of any partial denials or redactions. Specifically, if your office takes the position that any portion of the requested records is exempt from disclosure, we request that you provide us with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972), with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA” pursuant to *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979), and “describ[ing] each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information.” *King v. Department of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. See 5 U.S.C. §552(b). If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. *Mead Data Central v. Department of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemption in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

We request you provide copies of responsive records in electronic format if you possess them as such, otherwise photocopies are acceptable.

Please provide responsive documents in complete form, with any appendices or attachments as the case may be.

Request for Fee Waiver

We request your office(s) waive any fees associated with this request. As explained below, this FOIA Request satisfies the factors listed in EPA’s governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute - that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

ATI is a nonprofit, tax-exempt public interest organization, with formal research, educational and publication functions as part of its mission, and release of these records will serve the public interest by contributing significantly to the public’s understanding of the controversial topics of energy and environmental policy and specifically the ongoing debate over the transparency and credibility of the federal regulatory process involving a politically favored industry sector, and because such a release is not primarily in our organization’s commercial interest.

ATI has no commercial interest in obtaining the requested information. Instead, ATI intends to use the requested information to inform the public, so the public can meaningfully assess claims made by government agencies and participate in the policymaking process related to EPA policy with complete, relevant information. ATI will derive no economic benefit from the requested material. No "specialized use" of the documents is anticipated outside of that described herein.

If our fee waiver request is denied we are willing to pay up to \$150.00, and in the event of any appeal as appropriate and regardless of that outcome or your response to this fee waiver request we request the search and document production proceed in the interim.

ATI has engaged in high-profile efforts promoting the public interest advocating transparency and sensible policies to protect human health and the environment, and has routinely received fee waivers under FOIA.

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

The requested records relate to EPA's process and advice given it in the course of executing its taxpayer-funded work. Pursuant to FOIA this process, related correspondence, these determinations and the policies and procedures on which they are based are unquestionably "identifiable operations or activities of the government." The Department of Justice Freedom of Information Act Guide expressly concedes that "in most cases records possessed by federal agency will meet this threshold" of identifiable operations or activities of the government. There can be no question that this is such a case.

2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The disclosure of the requested documents must have an informative value and be "likely to contribute to an understanding of Federal government operations or activities." The Freedom of Information Act Guide makes it clear that, in the Department of Justice's view, the "likely to contribute" determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are "likely to contribute" to an understanding of your agency's activities because with limited exceptions they are not otherwise in the public domain and are not accessible other than through a FOIA request.

Given current concerns about the role and influence of outside groups on the federal government, this information will facilitate meaningful public understanding of such activities, therefore fulfilling the requirement that the documents requested be "meaningfully informative" and "likely to contribute" to an understanding of your agency's decision-making process and the controversial issue described above.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons.

Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined. As described in our Request, above and below, ATI has a well-established interest and expertise in the subject of transparency and environmental regulatory policies, demonstrated through, *inter alia*, freedom of information requests and litigation.

More importantly, ATI unquestionably has the "specialized knowledge" and "ability and intention" to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of the "public-at-large." ATI intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the organizations' websites, and emailing.

ATI professionals appear regularly on radio and television shows to discuss issues on which they work, and similarly write in newspapers and for numerous other publications with broad readership including the National Review, Daily Caller, Pajamas Media, Big Government, Watts Up With That and American Spectator websites.

ATI intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the organizations' websites, emailing and list-serve distribution to members.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

There are currently no records publicly available regarding the requested information. Absent disclosure of the records requested, the public will have no understanding of the matter.

The records requested will contribute to the public understanding of the government's "operations and activities" associated with this critically important information. The disclosure of the requested records is also essential to public understanding of EPA decision making process, possible motivations involving highly political and otherwise controversial topics. After disclosure of these records, the public's understanding of this process will be significantly enhanced. The requirement that disclosure must contribute "significantly" to the public understanding is therefore met.

5. The extent to which disclosure will serve the requester's commercial interest, if any.

As already stated ATI has no commercial interest in the information sought or otherwise in the requested records. Nor does ATI have any intention to use these records in any manner that "furthers a commercial, trade, or profit interest" as those terms are commonly understood. ATI is a tax-exempt organization under sections 501(c)(3) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of ATI's mission to inform the public on matters of vital importance to the regulatory process and policies relating to science and the environment.

6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

See answers to factors 1-5 above. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the "public interest" in disclosure. If no commercial interest exists, an assessment of that non-existent interest is not required. As noted above, ATI has no commercial interest in the requested records.

Disclosure of this information is not "primarily" in ATI's commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It will contribute significantly to public understanding of the regulatory process as already described.

We respectfully request, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. §552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

To keep costs and copying to a minimum please provide copies of all responsive records in electronic format if you have them.

Furthermore, as this matter involves a significant matter of public interest, and that the four different categories involve (three) different time parameters to search, please produce responsive records as they become available on a rolling basis.

Please direct all other disclosures to my attention at the following address:

American Tradition Institute
c/p Chris Horner
1489 Kinross Lane
Keswick, VA 22947

Transparency

We note the [inaugural post](#) on the White House “blog” made immediately upon President Obama’s swearing-in to office which restated, in pertinent part, a prominent promise made when courting votes during the election campaign:

Transparency — President Obama has committed to making his administration the most open and transparent in history, and WhiteHouse.gov will play a major role in delivering on that promise. The President’s executive orders and proclamations will be published for everyone to review, and that’s just the beginning of our efforts to provide a window for all Americans into the business of the government. You can also learn about some of the senior leadership in the new administration and about the President’s policy priorities. WhiteHouse.gov, “Change has come to WhiteHouse.gov”, January 20, 2009 (12:01 p.m.), http://www.whitehouse.gov/blog/change_has_come_to_whitehouse-gov/

If you have any questions, or would like to discuss this matter further, don't hesitate to contact me by phone at (202) 262-4458 or email at chris.horner@atinstitute.org.

Thank you for your attention to this matter.

Sincerely,

Christopher C. Horner
chris.horner@atinstitute.org
202.262.4458 (M)