

EXHIBIT 1



Environmental Law Center
at the American Tradition Institute

FREEDOM OF INFORMATION ACT REQUEST

January 19, 2011

Freedom of Information Officer
NASA Headquarters
300 E Street, SW
Room 9R35
Washington, DC 20546
e-mail: foia@hq.nasa.gov

BY ELECTRONIC MAIL -- Ethics and Related Records, James E. Hansen

Dear FOIA Officer,

On behalf of the Environmental Law Center of the American Tradition Institute, a 501c3 public policy institute, and pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552 *et seq.* ("FOIA"), please provide us within twenty (20) days copies of all records, documents, internal and external communications and other relevant covered material created by, received by, provided to and/or sent by NASA/Goddard Institute for Space Studies (GISS) as described below and guided by definitions and instructions in the Attachment.

As background to our Request for records we note that, per NASA regulations, in addition to the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR parts 2635 and 6901, all employees of the National Aeronautics and Space Administration "are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634, and to additional regulations regarding their conduct contained in 5 CFR part 735 and 14 CFR part 1207", and also that "A NASA employee shall not engage in outside employment prohibited by paragraph (c) of this section and shall obtain approval before engaging in the outside employment activities specified in paragraph (d) of this section."

As such, please provide us copies of documents meeting the following descriptions.

- I. Approvals and Waivers for Outside Employment
 1. All *applications or requests for approval for outside employment* by James E. Hansen of the Goddard Institute for Space Studies (GISS) pursuant to 5 C.F.R. 6901, *and any documents referenced in or provided with any such applications as attachments or otherwise;*

2. All approvals or denials of such applications described in "1", *supra*, pursuant to 5 C.F.R. 6901.103(g), and any other communications made or other actions taken in response to those applications or requests for approval, and related correspondence, including any documents referenced therein, as attachments or otherwise;
3. All requests for a determination, exemption or waiver by James E. Hansen as required by or otherwise as sought under 18 U.S.C. §208(b)(1) or (b)(3) or 14 C.F.R. §1207.102, and related correspondence, including documents referenced therein as attachments or otherwise;
4. All approvals or denials of such applications described in "3", *supra*, pursuant to 14 C.F.R. §1207.102 (b), and any other communications made or other actions taken in response to those applications or requests for approval, and related correspondence, including any documents referenced therein as attachments or otherwise;
5. Each of Dr. Hansen's performance plans (which is not the performance review);
6. All correspondence, including but not limited to electronic mails, that addresses ethics, waivers and/or approvals for outside employment and that was sent to and/or received by James E. Hansen on his NASA/GISS mail accounts;
7. All correspondence, including but not limited to electronic mails, that addresses ethics, waivers and/or approvals for outside employment in NASA's possession, that was sent to or received by Dr. Hansen using any email account and corresponding with the following individuals:
 - a. Gavin Schmidt
 - b. Michael C. Wholley in his role as Designated Agency Ethics Official
 - c. Larry D. Travis
 - d. Goddard's Office of Human Resources/"Human Capital Management"
 - e. Dorothy Kerr

II. Financial Disclosure/Conflict of Interest

1. All other statements or communications held by the officer responsible for, and/or the file addressing financial disclosure, report of a gift or honorarium, or statement of conflicts of interest, which statements or communications are described or intended to serve as, or which otherwise comment on financial disclosure, report of a gift or honorarium, or statement of conflicts of interest by James E. Hansen. Responsive records include any supplementary filings and any documents referenced in or provided with any such reports as attachments, follow-up documents or otherwise;
2. Any draft and final copies of Standard Form 278 Schedule B Part II and Schedule C Part II prepared by or for James E. Hansen of GISS, including any supplementary filings and any documents referenced in or provided with any such reports as attachments, follow-up documents or otherwise;
3. As regards both II 1 and 2, to expedite matters we request up front specifically that you provide the records after redacting personal information of the reporting

employee to which we are not entitled, and provide a *Vaughn* log of what kind of information was redacted, as we also set forth elsewhere in this Request;

III. Disciplinary Action

1. Any *internal discussion* of any cautions or warnings of actual or possible disciplinary action or proceeding pursuant to any of the above-cited authorities, or any other authority, that may be or had already been provided to James E. Hansen; please note that while any such cautions or warnings may be exempt from FOIA we specifically seek any internal discussion thereof, which are not so exempt.

Scope of Request: Offices and Period Covered

Documents covered by each element of this Request will likely be centrally located in NASA/GISS designated repository for ethics requirement-related records; we are confident that NASA/GISS know of this location without requiring extensive research. They will have been received or produced by relevant NASA office(s) and/or otherwise dated between January 1, 2004 **and the date you fully comply with the relevant element** of the Request.

This 1/1/04 date relates to covered records sought in "Approvals and Waivers for Outside Employment", *supra*, in the following way. Responsive records include any waivers *in force or applicable as of January 1, 2004, as well as any subsequent applications, denials, waivers, etc. as described*. For example, if Dr. Hansen was operating under a three (or more) year waiver at the time granted in, say, 2002, this Request also contemplates that record(s) as described, *supra*. This caveat is referenced again in the attached Instructions.

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.

Request for Fee Waiver

We request your office(s) waive any fees associated with this request. This FOIA Request satisfies the factors listed in NASA'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), see also 14 C.F.R. §1206.702.

ATI is a nonprofit, tax-exempt public interest organization dedicated in great part to relevant energy and environment issues, with formal research, educational and publication functions as part of its mission (see 14 C.F.R. Sec. 1206.701(b)), and release of these records will serve the public interest by contributing significantly to the public's understanding of topics of great public interest, specifically the transparency, objectivity and credibility of taxpayer-funded science (particularly applicable to greenhouse gas policies or regulation), the activities of taxpayer-funded scientists, and compliance by government agencies with applicable ethics laws, regulations and requirements.

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 hydrocarbon energy production and use with complete, relevant information. Neither ATI nor any foreseeable party will derive 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 reasonable costs, 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.

Request for Fee Waiver -- Justification

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

The requested records relate to NASA officials' compliance with relevant ethics, conflict of interest and related laws and other requirements. The applicable processes, 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 (DOJ)

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. Disclosure is "likely to contribute" to an understanding of specific government operations or activities because the releasable material is meaningfully informative in relation to the subject matter of the request.

The requested information relates to the operation of government, particularly regarding the important areas of great and increasing public interest including proper expenditure of taxpayer resources, freedom from conflicts of interests and otherwise proper ethical behavior by government employees (particularly those in high-profile positions directly or indirectly working or otherwise in a position to influence policy), transparency of taxpayer-funded science, environmental policy, climate change, transparency of policymaking and private interaction with and possible influence over the agencies of government.

As the Ethics in Government Act recognized, it is of critical importance to ensure confidence in the integrity of the Federal Government by demonstrating that high-level employees are able to carry out their duties without compromising the public trust. As such, the general and policy-oriented public will benefit through the dissemination of the findings and works produced as a result of the information received. A fairly widespread portion of the public at large, as opposed to a narrow spectrum of individuals, will receive this benefit, first through ATI whose professionals are widely published and have an extensive media presence to discuss topical policy matters, then through Congress' and state legislatures' ongoing efforts to the extent their inquiries utilize the information.

As such the disclosure of the requested documents will be of informative value and be "likely to contribute to an understanding of Federal government operations or activities." DOJ's Freedom of Information Act Guide makes it clear that, in the Department'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 decisions because they are not otherwise in the public domain and are not accessible other than through a FOIA request.

Given the anticipated economic impact to flow from the relevant government policies now being promulgated influenced in great part by activities of individuals at issue in this Request, it is important for information relating to relevant government operations and activities to be made available to the public. As the issues and individuals, and claims by these individuals, involved have with NASA's assistance become among the Agency's most high-profile, by facilitating meaningful public participation in the relevant debate the records we seek fulfill the requirement that requested information be "meaningfully informative" and "likely to contribute" to an understanding of your agency's decision-making process regarding sanctioning of certain behavior governed by the ethics requirements.

3. The disclosure will 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 above and below, ATI has an interest and expertise in the subject of taxpayer-funded science and the related policies.

ATI-affiliated professionals publish that upon which they work via print and electronic media outlets read by legislators and staff, education and policy professionals and other interested parties; they also are widely broadcast in electronic media interviews. Those activities are in fulfillment of ATI's mission. The information received will be disseminated through a) opinion pieces published in national and local newspapers and magazines, b) electronic news and opinion journals including "blogs" to which our professionals contribute, which include some of the most heavily trafficked sites, c) as relevant, national, local and syndicated radio programs as well as national cable television news programs dedicated to discussing public policy and on which ATI professionals appear, and d) to the extent Congress or states engaged in relevant oversight or related legislative or judicial activities find that which is received noteworthy, it will become part of the public record on deliberations of the legislative branches of the Federal and State Governments on the relevant issues.

To judge by internet and media attention -- including specifically media attention to the claims made by the individual at the center of this Request -- the issues at the core of this FOIA Request are, or surely are among, those which are of the greatest public interest among all related or relevant issues. To deny this would be *prima facie* capricious. Therefore we request the fee waiver.

ATI counsel making this request unquestionably have 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 counsel and staff write for numerous publications with broad readership including the *National Review*, *Daily Caller*, *Pajamas Media*, *Big Government*, and *American Spectator* websites (see 14 C.F.R. Sec. 1206.701(c)).

ATI intends to disseminate the information it receives through FOIA regarding these government operations and activities largely but not exclusively through these outlets.

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

There is currently no information publicly available regarding the requested information. Absent disclosure of the records requested, the public's understanding will be shaped only by what is disclosed by the private interests involved.

The records requested will contribute to the public understanding of the government's compliance with policies and practices governing permissible activities for its employees.

The disclosure of the requested records is also essential to public understanding of NASA's decision making process and those relating to U.S. participation in and public debate over critical "climate science" efforts including but not limited to NASA pronouncements and the "IPCC" process. 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 section 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 energy, the environment and public health.

As such, the identified public interest in the disclosure outweighs the requester's (non-existent) commercial interest. 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.

While disclosure of this information is not "primarily" in ATI's commercial interest, 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 NASA waive processing and copying fees pursuant to 5 U.S.C. §552(a)(4)(A) and 14 C.F.R. Subpart 7. In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to compile the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

We certify that the basis for and all representations made as part of our Request is true and correct to the best of our knowledge and belief.

If you have any questions please do not hesitate to contact me.

Sincerely,

Christopher C. Horner, Esq.
chris.horner@atinstitute.org

ATTACHMENT

INSTRUCTIONS

1. Unless otherwise indicated, each paragraph of this FOIA request relates to the period from January 1, 2004 through the date NASA satisfies its complete legal obligation to provide the entirety of the non-exempt records responsive to the relevant element of this request. Any documents prepared during this time period, or before this time period but which are referenced in responsive records and in NASA's possession or subject to its control, and also those in effect on that date as described at the top of Page 3, under "Scope of Request", *supra*, are also to be produced as responsive.
2. If any responsive document requested was, but is no longer in NASA's possession, subject to NASA's control, or in existence, state for each such document:
 - (a) the type of document;
 - (b) whether it is missing, lost, has been destroyed, or has been transferred to the possession, custody, or control of other persons;
 - (c) the circumstances surrounding, and the authorization for, the disposition described in (b) above;
 - (d) the date or approximate date of the disposition described in (b) above;
 - (e) the identity of all persons having knowledge of the circumstances described in (c) above; and
 - (f) the identity of all persons having knowledge of the document's contents.
3. With respect to each document produced, identify the person producing the document and the specific request in response to which such production is being made. This is effectively done by grouping like responsive documents.
4. All uses of the conjunctive should be interpreted as including the disjunctive and vice versa in order to bring within the scope of this request any information or documents that might otherwise be construed to be outside of its scope.
5. Words in the singular should be read to include the plural and vice versa.
6. Each document request contemplates production of the entire document without redaction, abbreviation or deletion, except where authorized by law.
7. 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 of potentially responsive document each such objection applies. Further, please inform us of the basis of any partial denials or redactions.
8. 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, with sufficient specificity to permit a reasoned judgment as to whether the material is actually exempt under FOIA, and describing each document or portion thereof withheld, and for each withholding discuss the consequences of supplying the requested information.

9. In the event that you determine some portions of the requested records are properly exempt from disclosure under any of the requests above, please disclose any reasonably segregable, non-exempt portions of the requested records. 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. As you aware claims of non-segregability should be made with the same detail as required for claims of exemption in an index. If a request is denied in whole please state specifically that it is not reasonable to segregate portions of the records for release.
10. Satisfying this request contemplates NASA providing copies of documents, 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.
11. To the extent that any of the documents or data are stored in an encrypted fashion, the documents and data should be produced in such a way that the public can decrypt and read such documents or data.
12. The scope of this request is intended to reach any of the described items which are stored for you by a third party organization, by an employee on a computer he uses during normal business hours in a NASA/GISS facility regardless of whether that computer is owned by NASA/GISS, and/or stored at an offsite location.
13. The scope of this request is to reach any and all data, documents and things in your possession, including those stored or residing on any computer, hard drive, desktop computer, laptop computer, file server, database server, email server or other systems where data was transmitted or stored on purpose or as a result of even transient use of a system or application in the course of day to day research or product processing work that is owned or contracted for by you or any of your officers, managers, employees, agents, board members, academic departments, divisions, programs, IT department, contractors and other representatives.

DEFINITIONS

1. As used herein, the words NASA/GISS mean the National Aeronautics and Space Administrations, including but not limited to the Goddard Institute for Space Studies (including whatever predecessor names the Institute may have carried during the period in question in this request), and includes all of the officers, managers, employees, agents, board members, academic departments, divisions, programs, IT department, contractors and other representatives of NASA and/or GISS.

2. As used herein, the words "record", "records", "document" or "documents" mean the original and any copies of any written, printed, typed, electronic, or graphic matter of any kind or nature, however produced or reproduced, any book, pamphlet, brochure, periodical, newspaper, letter, correspondence, memoranda, notice, facsimile, e-mail, manual, press release, telegram, report, study, handwritten note, working paper, chart, paper, graph, index, tape, data sheet, data processing card, or any other written, recorded, transcribed, punched, taped, filmed or graphic matter now in your possession, custody or control.
3. As used herein, the words "identify," "identity," or "identification" when used in reference to a natural person mean to state his or her full name, present or last known address, telephone number, last known position and business affiliation, and each of his or her positions during the relevant time period. When used in reference to any other type of person, these words mean to state the name of the entity, its present or last known address, and its telephone number.
4. When used in reference to a document kept or prepared in the course of business the words "identify" or "identification" mean to state its date, author, the type of document (e.g., letter, memorandum, telegram, chart, photograph, sound reproduction, etc.) or, if the above information is not available, some other means of identifying it; its present location; and the name of each of its present custodians.
5. As used herein, the words "person" or "persons" include any individual, firm, partnership, association, trust, joint venture, corporation, limited liability company, or other legal or commercial entity.
6. As used herein, the word "relating" means to make a statement about, discuss, describe, reflect, identify, deal with, consist of, establish, comprise, list, or in any way pertain, in whole or in part, to the subject.
7. As used herein, the term "document" or "documents" is inclusive of not only federal "records" but non-record writings, communications, meetings notes and calendar entries.
8. As used herein, the term "compensation" includes any payments for travel and/or lodging, and to include in-kind compensation such as room and/or board, preferences in participation at or in non-federal *fora*, outlets or publications.
9. As used herein, the term "non-federal *fora* or outlets" and "non-federal activity" include any work on or addressing global climate observation, modeling and/or projection. An example of non-federal activity is the Intergovernmental Panel on Climate Change (IPCC).
10. As used herein, the term "presented or published" includes speeches, testimony, publications of any sort including but not limited to newspaper or other outlet opinion pieces, lectures, materials made available on the internet (including blog postings).

11. As used herein, the term "owned or leased equipment" includes computers, projectors and portable storage devices accessible and accessed during regular business hours on a regular basis by NASA and/or GISS employees in NASA/GISS offices and/or facilities, the latter which includes facilities occupied by NASA/GISS employees whether by lease or other agreement, formal or informal, express or tacit.
12. As used herein, the term "private enterprise" means/includes any non-federal government *fora*, including any office, branch or affiliate of a university be it public or private.