

**AFFIDAVIT OF CHRISTOPHER C. HORNER, ESQ.**

**DIRECTOR OF LITIGATION, AMERICAN TRADITION INSTITUTE**

**APPEAL OF EPA DENIAL OF FOIA NOS. HQ-FOI-01052-12, HQ-FOI-01058-12**

My name is Christopher C. Horner, I am an attorney licensed to practice law in the District of Columbia. I attest to the following on behalf of the American Tradition Institute (ATI).

On April 2, 2012, on behalf of ATI I sent by electronic mail two Requests under the Freedom of Information Act (FOIA) to the Environmental Protection Agency, for certain records dated “between January 21, 2009 and the date EPA performs the relevant, respective search(es) in response to this Request, inclusive” and citing or referring to two different environmental pressure groups, the Sierra Club (“Sierra”) and the American Lung Association (“ALA”) (respectively, FOIA Request Nos. HQ-FOI-01052-12, HQ-FOI-01058-12.

EPA responded with acknowledgement letter(s) on April 2 and April 3, respectively.

Specifically, approximately one week after sending these requests the undersigned received a telephone call from a man identifying himself as being a FOIA officer with EPA, asking that we narrow the “Sierra” Request, FOIA No. HQ-FOI-01052-12. His position was that there are many people named “Sierra” and that if I rephrased the search parameter to Sierra Club it would expedite handling. The actual search parameters indicate such a narrowing is not necessary even given that fact, however, as we specify if the word “Sierra” appears in the *domain name*. (e.g., @Sierra.org).

Given that Sierra Club is commonly referred to among relevant professionals or communities simply as “Sierra”, and that searching for “Sierra Club” would inappropriately limit

the search to exclude many responsive records, we concluded the call reaffirming that this Request sought records using “Sierra” as described, referencing Sierra Club.

After this telephone call, however, EPA provided no further response. EPA did not seek an extension or otherwise notify ATI of reasons it must delay responding to ATI. EPA provided no responsive records and is improperly withholding responsive information through selective and uneven application, and therefore misapplication, of FOIA.

On July 5, 2012, three months after EPA received these Requests, at approximately 1:10 p.m. EDT I telephoned the number provided on both acknowledgement letters (202.566.1667). This call was answered by a woman identifying herself as Vivian, and the FOIA specialist assigned FOIA No. HQ-FOI-01058-12. She informed me that “Cindy” [ph] in her office was assigned FOIA No. HQ-FOI-01052-12.

When Vivian pulled the file to check on the status she uttered what sounded like a surprised “Oh.” After a pause she informed me, according to my contemporaneous notes of this conversation, that “Larry [Gottesman] told us he was going to write you a letter” and that neither she nor Cindy should take further action on the Requests that had been assigned to them. She stated that Mr. Gottesman had informed her that he would take over their handling, and specifically that he would send the fee waiver response and the initial determination.

ATI has not received any correspondence or otherwise communication from Mr. Gottesman after EPA’s acknowledgement letters.

My contemporaneous notes of this conversation also reflect Vivian stating that the “Request went to the administrator’s office and OAR [Office of Air and Radiation]”. Vivian also mentioned that a factor in the fee waiver would likely be that the requests were “very broad”. I

asked where “breadth” was located among the relevant factors in determining a fee waiver. After she did not understand my pronunciation of “breadth” twice, I restated her assertion that because they were “very broad” that would impact the Agency’s fee waiver determination, asking where that consideration is found and that according to statute and regulation that is not an appropriate consideration. “Vivian” demurred and the call ended with Vivian stating that she would make a note to Mr. Gottesman and he would contact me the next day. We have not received any such contact.

I submit this affidavit under penalty of perjury on this date, the 9th of July, 2012.

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Christopher C. Horner, Esq.

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July 9, 2012