

the FMC relevant to this lawsuit, and it includes the coastal waters of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut. 16 U.S.C. § 1852(a)(1)(A).

2. The NEFMC is composed of eighteen (18) voting members, *id.*, including twelve (12) appointees chosen by the Secretary of Commerce from lists of nominees provided by the governors of states within the boundaries of the FMC. *Id.* §§ 1852(b)(1)(C), (b)(2)(A) (C). The NEFMC includes the “principal State official with marine fishery management responsibility and expertise” from each state, *id.* § 1852(b)(1)(A), as well as the Administrator of the National Marine Fisheries Service (“NMFS”) Mid-Atlantic Regional Office, or his designee. *Id.* § 1852(b)(1)(B).

3. Some commentators have suggested that the membership of the NEFMC and, indeed, the membership of all the regional FMCs is not representative of the fishing industry. Representation of the fishing industry is “generally skewed towards the larger corporate interests that support larger sized vessels, whereas the small-scale vessel fleets that are the traditional core of coastal communities (and more likely to have conservation interests) are often less represented[.]” Thomas A. Okey, *Membership in the Eight Regional Fishery Management Councils in the United States: Are Special Interests Over-Represented?*, 27 *Marine Pol’y* 193, 199 (2003).

4. Although the FMCs are supervised by NMFS, and ultimately by the Secretary of Commerce, their members exercise significant independent power. They propose Fishery Management Plans (“FMPs”), amendments, and framework adjustments; they conduct hearings; and they determine annual catch limits. *See* 16 U.S.C. § 1852(h). The FMCs even have the ability to constrain the Secretary of Commerce. *See* 16 U.S.C. § 1854(a) (Secretary may only

approve, disapprove, or partially approve FMPs given to him; he may not modify them on his own authority); *id.* § 1854(h) (Secretary may not repeal or revoke FMPs without FMC approval).

5. The FOIA request at issue here is aimed at providing transparency into how the Secretary of Commerce determines the membership of the FMCs, including the NEFMC. NOAA has not disclosed records about this process to the public before, and there is danger for politicization in how members are actually chosen.

6. The records at issue in this case, which include records of communication between high-ranking agency officials, will permit the public to understand how the most recent round of membership selection for the NEFMC was handled, and whether that process was at all tinged by political considerations or other untoward government action.

JURISDICTION AND VENUE

7. Jurisdiction is asserted pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 552(a)(4)(B), (a)(6)(E)(iii).

8. Venue is proper pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).

PARTIES

9. CoA Institute is a non-profit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair. In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. CoA Institute regularly requests access under the FOIA to the public records of federal agencies, entities, and offices, including NOAA, and disseminates its findings, analysis, and commentary to the general public.

10. NOAA is an agency within the meaning of 5 U.S.C. § 552(f)(1). NOAA has possession, custody, and control of the records to which CoA Institute seeks access and that are the subject of this Complaint.

FACTS

11. By letter, dated July 13, 2016, CoA Institute submitted a FOIA request to NOAA seeking access to “[a]ll documents related to the appointment or reappointment of members of the New England Fishery Management Council[.]” Ex. 1 at 1. CoA Institute further specified that its request included “all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication.” Ex. 1 at 1. The time period for the request was “November 1, 2015 to the present.” Ex. 1 at 1.

12. CoA Institute provided a non-exhaustive list of potential record custodians whose correspondence on personal or official e-mail accounts could be responsive to the July 13, 2016 FOIA request. *See* Ex. 1 at 2.

13. CoA Institute also requested a public interest fee waiver and classification as a representative of the news media for fee purposes. Ex. 1 at 2 4.

14. By letter, dated July 29, 2016, NOAA informed CoA Institute that it received the FOIA request on July 19, 2016. Ex. 2 at 1. NOAA indicated that it would invoke the ten-day automatic statutory extension of its response deadline due to “unusual circumstances,” namely, the “need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request[.]” Ex. 2 at 1.

15. This same letter assigned the CoA Institute FOIA request the tracking number “DOC-NOAA-2016-001453.” Ex. 2 at 1.

16. On August 1, 2016, NOAA granted the CoA Institute request for a public interest fee waiver. Ex. 3. The agency did not issue a determination on the CoA Institute request for categorization as a representative of the news media for fee purposes.

17. By letter, dated August 30, 2016, NOAA released its first interim response and production of responsive records. Ex. 4. The agency indicated that it “located 19 documents,” to which CoA Institute was “granted full access.” Ex. 4. The interim production also provided CoA Institute with appeal rights. Ex. 4.

18. On September 26, 2016, CoA Institute filed an administrative appeal from the August 30, 2016 interim production because NOAA improperly withheld material from three (3) responsive records. Ex. 5. The material in question was redacted as “non-responsive.” Ex. 5.

19. The Department of Commerce (“DOC”) acknowledged receipt of the CoA Institute administrative appeal on September 29, 2016. Ex. 6. The agency has failed to provide a final response or to provide an estimate date of completion for processing the appeal.

20. To date, NOAA has failed to provide any additional interim responses or productions of responsive records, let alone a final determination. According to FOIAonline, the current estimated date of completion for the CoA Institute request is “August 30, 2016.” Ex. 7.

COUNT 1

Violation of the FOIA: Failure to Comply with Statutory Deadlines

21. CoA Institute repeats paragraphs 1 through 20.

22. The FOIA requires an agency to respond to a record request within twenty (20) business days or, in “unusual circumstances,” within thirty (30) business days. 5 U.S.C. §§ 552(a)(6)(A) (B). If an agency requires additional time, it must provide the requester “an

opportunity to arrange . . . an alternative time frame for processing the request[.]” *Id.*

§ 552(a)(6)(B)(ii).

23. More than thirty (30) business days have passed since NOAA received CoA Institute’s FOIA request on July 19, 2016.

24. NOAA has failed to issue a final determination on and promptly produce all records responsive to CoA Institute’s FOIA request within the applicable statutory time limits.

25. When attempting to cite “unusual circumstances,” NOAA failed to comply with the FOIA in that it never “arrange[d] . . . an alternative time frame” for responding to CoA Institute’s request, failed to issue an estimated date of completion, and did not invite CoA Institute to contact NOAA for the purposes of negotiating an “alternative” response date.

26. CoA Institute has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C).

RELIEF REQUESTED

WHEREFORE, CoA Institute respectfully requests and prays that this Court:

- a. Order NOAA to process the July 13, 2016 FOIA request and to make a final determination within twenty (20) business days of the date of the Order;
- b. Order NOAA to produce all responsive records promptly after issuing its final determination;
- c. Order NOAA to issue a *Vaughn* index accompanying the records produced and explaining each redaction or withholding, if applicable;¹

¹ See generally *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) (requiring an agency to prepare an index correlating each withheld document, or portion thereof, with a specific FOIA exemption and nondisclosure justification).

d. Award CoA Institute its costs and reasonable attorney fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

e. Grant such other relief as the Court may deem just and proper.

Dated: November 1, 2016

Respectfully submitted,

/s/ Ryan P. Mulvey

Ryan P. Mulvey

D.C. Bar No. 1024362

Eric R. Bolinder

D.C. Bar No. 1028335

CAUSE OF ACTION INSTITUTE

1875 Eye Street, N.W., Suite 800

Washington, D.C. 20006

Telephone: (202) 499-4232

Facsimile: (202) 330-5842

ryan.mulvey@causeofaction.org

eric.bolinder@causeofaction.org

Counsel for Plaintiff

EXHIBIT

1



July 13, 2016

VIA CERTIFIED MAIL AND E-MAIL

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910
FOIA@noaa.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

I write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), CoA Institute hereby requests access to records maintained by the National Oceanic and Atmospheric Administration (“NOAA”).

CoA Institute is investigating recent appointments to the New England Fishery Management Council, a regulatory body created by the Magnuson-Stevens Fishery Conservation and Management Act. *See* 16 U.S.C. § 1852. Voting members of the Council are appointed to staggered three-year terms by the Secretary of Commerce from lists of candidates submitted by the governors of States within the Council’s jurisdiction. *Id.* § 1852(b). To aid in its investigation, CoA Institute requests:

All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities:

¹ *See* CAUSE OF ACTION INSTITUTE, www.causeofaction.org.

1. The Office of the Secretary of Commerce
2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere
3. Lois J. Schiffer, NOAA General Counsel
4. Eileen Sobeck, Assistant Administrator for Fisheries
5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs
6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries
7. John Bullard, Northeast Regional Administrator
8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries
9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center

Request for a Public Interest Fee Waiver

CoA Institute requests a waiver of any and all applicable fees.² FOIA and applicable regulations provide that agencies shall furnish requested records without or at reduced charge if “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.”³ In this case, the requested records will shed light on “operations or activities of the government,” including potential abuses in determining the membership of the New England Council. Disclosure is likely to “contribute significantly” to public understanding of these matters because NOAA’s internal records and third-party communications on the subject have not been made publicly available. CoA Institute is interested in educating the public about NOAA’s decision-making, and the requested records are likely to contribute to that effort and attract public interest.

CoA Institute has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. The CoA Institute staff has significant experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through CoA Institute’s regularly published online newsletter, memoranda, reports, or press releases. Further, CoA Institute, a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, has no commercial interest in making this request.

Request To Be Classified as a Representative of the News Media

For fee status purposes, CoA Institute also qualifies as a “representative of the news media” under FOIA.⁴ As the D.C. Circuit recently held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.⁵ CoA Institute satisfies this test because it gathers information of potential interest to a segment of the public,

² 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11 (a).

³ 5 U.S.C. § 552(a)(4)(A)(iii); *see Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

⁴ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 15 C.F.R. § 4.11(b)(6).

⁵ *See Cause of Action*, 799 F.3d at 1121.

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uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.⁶ Although it is not required by the statute, CoA Institute gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. CoA Institute does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.⁷ These distinct works are distributed to the public through various media, including CoA Institute's website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a "representative of the news media" contemplates that organizations such as CoA Institute, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."⁸ In light of the foregoing, numerous federal agencies have appropriately recognized CoA Institute's news media status in connection with its FOIA requests.⁹

⁶ Cause of Action notes that the agency's definition of "representative of the news media" (15 C.F.R. § 4.11(b)(6)) is in conflict with the statutory definition and controlling case law. The agency has improperly retained the outdated "organized and operated" standard that Congress abrogated when it provided a statutory definition in the OPEN Government Act of 2007. *Id.* at 1125 ("Congress . . . omitted the 'organized and operated' language when it enacted the statutory definition in 2007. . . . [Therefore,] there is no basis for adding an 'organized and operated' requirement to the statutory definition."). Under either definition, Cause of Action qualifies as a representative of the news media.

⁷ See, e.g., *Cause of Action Testifies Before Congress on Questionable White House Detail Program*, CAUSE OF ACTION (May 19, 2015), available at <http://goo.gl/Byditl>; *CAUSE OF ACTION, 2015 GRADING THE GOVERNMENT REPORT CARD* (Mar. 16, 2015), available at <http://goo.gl/MqObwV>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com*, CAUSE OF ACTION (Sept. 8, 2014), available at <http://goo.gl/935qAi>; *CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS* (Mar. 18, 2014), available at <http://goo.gl/BiaEaH>; *CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM* (Sept. 23, 2013), available at <http://goo.gl/N0xSvs>; *CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I* (Aug. 2, 2013), available at <http://goo.gl/GpP1wR>.

⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

⁹ See, e.g., FOIA Request CFPB-2016-222-F, Consumer Fin. Prot. Bureau (Apr. 20, 2016); FOIA Request CFPB-2016-207-F, Consumer Fin. Prot. Bureau (Apr. 14, 2016); FOIA Request 796939, Dep't of Labor (Mar. 7, 2016); FOIA Request 2015-HQFO-00691, Dep't of Homeland Sec. (Sept. 22, 2015); FOIA Request F-2015-12930, Dept. of State (Sept. 2, 2015); FOIA Request 14-401-F, Dep't of Educ. (Aug. 13, 2015); FOIA Request HQ-2015-01689-F, Dep't of Energy (Aug. 7, 2015); FOIA Request 2015-OSEC-04996-F, Dep't of Agric. (Aug. 6, 2015); FOIA Request OS-2015-00419, Dep't of Interior (Aug. 3, 2015); FOIA Request 780831, Dep't of Labor (Jul 23, 2015); FOIA Request 15-05002, Sec. & Exch. Comm'n (July 23, 2015); FOIA Request 145-FOI-13785, Dep't of Justice (Jun. 16, 2015); FOIA Request 15-00326-F, Dep't of Educ. (Apr. 08, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm'n (Feb. 13, 2015); FOIA Request HQ-2015-00248, Dep't of Energy (Nat'l Headquarters) (Dec. 15, 2014); FOIA Request F-2015-106, Fed. Comm'n Comm'n (Dec. 12, 2014); FOIA Request HQ-2015-00245-F, Dep't of Energy (Dec. 4, 2014); FOIA Request F-2014-21360, Dep't of State, (Dec. 3, 2014); FOIA Request LR-2015-0115, Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, Dep't of Interior (Office of Sec'y) (Nov. 20, 2014); FOIA Request CFPB-2015-049-F, Consumer Fin. Prot. Bureau (Nov. 19, 2014); FOIA Request GO-14-307, Dep't of Energy (Nat'l Renewable Energy Lab.) (Aug. 28, 2014); FOIA Request HQ-2014-01580-F, Dep't of Energy (Nat'l Headquarters) (Aug. 14, 2014); FOIA Request LR-20140441, Nat'l Labor Relations Bd. (June 4, 2014); FOIA Request 14-01095, Sec. & Exch. Comm'n (May 7, 2014); FOIA Request 2014-4QFO-00236, Dep't of Homeland Sec. (Jan. 8, 2014); FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013);

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CoA Institute has no commercial interest in the requested documents. CoA Institute, as a nonprofit organization, did not receive financial compensation in submitting this request, and it will not receive financial compensation from the intended use of the requested records. CoA Institute submits this requests on its own behalf and in pursuit of its government accountability mission, not on behalf of any other party, including any CoA Institute client. CoA Institute primarily intends to use the requested records for investigative and educational purposes.

CoA Institute represents the plaintiffs in *Goethel v. Pritzker*, No. 15-497 (D.N.H.), which involves various legal challenges to programs enacted by the New England Council. In addition, Ellen Goethel, the wife of plaintiff David Goethel, is now ended her term as a member of the New England Council. Participation in litigation, however, does not establish a commercial interest in requested documents,¹⁰ and as set forth above, CoA Institute is the relevant requester — not the *Goethel* plaintiffs. CoA Institute has ethical obligations to its clients that may require it to use the requested records in litigation, but that is not the primary purpose of the requests, which are instead sought for CoA Institute's investigative efforts and educational mission rather than for any party's personal use or commercial gain.¹¹ At any rate, the parties in *Goethel* case have completed summary judgment briefing based on the certified administrative record produced by the defendant agencies, and it is unlikely that the parties will seek to introduce additional information.

Record Preservation Requirement

CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on CoA Institute's request and any administrative remedies for appeal have been exhausted. It is unlawful for BOEM to destroy or dispose of any record subject to a FOIA request.¹²

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be

FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

¹⁰ Cf. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987); *Muffoletto v. Sessions*, 760 F. Supp. 268, 277-78 (E.D.N.Y. 1991).

¹¹ See Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10,012, 10,018 (Mar. 27, 1987).

¹² See 15 C.F.R. § 4.3(d) ("Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA."); see also 36 C.F.R. § 1230.3(b) ("Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record . . . ; and disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records."); *Chambers v. Dep't of the Interior*, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) ("[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act."); *Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).

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produced more readily, CoA Institute requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by telephone at (202) 499-4232 or by e-mail at stephen.schwartz@causeofaction.org. Thank you for your attention to this matter.

Sincerely,


STEPHEN S. SCHWARTZ
COUNSEL

EXHIBIT

2



July 29, 2016

Stephen S. Schwartz
Cause of Action Institute
1875 Eye St. N.W.,
Suite 800
Washington, DC 20006

Re: FOIA Request DOC-NOAA-2016-001453

Dear Mr. Schwartz:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request.

Your request was entered into FOIAonline, our request tracking database, on July 19, 2016. Your request tracking number is DOC-NOAA-2016-001453.

You requested:

"All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities:

- 1. The Office of the Secretary of Commerce*
- 2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere*
- 3. Lois J. Schiffer, NOAA General Counsel*
- 4. Eileen Sobeck, Assistant Administrator for Fisheries*
- 5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs*
- 6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries*
- 7. John Bullard, Northeast Regional Administrator*
- 8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries*
- 9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center"*

15 C.F.R. 4.6(d) (2) allows an agency to extend the FOIA response deadline by ten business days for unusual circumstances. Due to *the need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request*; we are choosing to invoke this 10 day extension and anticipate completing your request by August 30, 2016.

Please contact us if you are interested in narrowing the scope of your request. Narrowing your request will help expedite its processing.



If you have questions regarding your request, please contact Amanda Patterson at Amanda.Patterson@NOAA.gov or call (978) 281-9210.

Sincerely,

Amanda J. Patterson, MLS
FOIA Coordinator, Greater Atlantic Region

EXHIBIT

3



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Information Officer
High Performance Computing and Communications

Via FOIAonline

August 1, 2016

Attn: Stephen S. Schwartz
Cause of Action Institute
1875 Eye St. NW, Suite 800
Washington, DC 20006

Re: FOIA Request No. DOC-NOAA-2016-001453

Dear Mr. Schwartz:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on July 14, 2016, seeking the following records:

All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities: 1. The Office of the Secretary of Commerce 2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere 3. Lois J. Schiffer, NOAA General Counsel 4. Eileen Sobeck, Assistant Administrator for Fisheries 5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs 6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries 7. John Bullard, Northeast Regional Administrator 8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries 9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center

In order to determine whether your request qualifies for a fee waiver or reduction in fees, pursuant to 5 C.F.R. § 4.11(k) (2010), we must evaluate whether disclosure of the requested information is: 1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and 2) not primarily in the commercial interest of the requester.

In determining whether your request meets the first fee waiver requirement, we considered the following factors.

1) Whether the subject of the requested records concerns the operations of activities of the

Government.

- 2) Whether the disclosure is “Likely to contribute” to an understanding of Government operations or activities.
- 3) Whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.
- 4) Where the disclosure is likely to contribute “significantly” to public understanding of Government operations or activities.

In determining whether your request meets the second fee waiver requirement, we considered the following factors:

- 1) Whether the requester has a commercial interest that would be furthered by the requested disclosure.
- 2) Whether any identified commercial interests of the requester is sufficiently great, in comparison with the public interest in disclosure that disclosures are “primarily in the commercial interest of the requester.”

Based on the above criteria we have determined that you adequately addressed the statutory requirements for a waiver of fees in your July 14, 2016 submission. You have been granted a full waiver for the records requested. This supersedes the partial grant of your prior request for a waiver of fees. Please be advised however, granting this waiver does not automatically apply to future requests submitted by you or your organization. Requests for fee waivers are determined on a case-by-case basis for the records requested under statutory fee waiver requirements.

If you have any questions concerning the response to your fee waiver request, please call (301) 628-5658.

Sincerely,

/S/

Mr. Mark Graff
NOAA FOIA Officer

EXHIBIT

4



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

Stephen S. Schwartz
Cause of Action Institute
1875 Eye St. N.W.,
Suite 800
Washington, DC 20006

Aug 30, 2016

Re: FOIA Request DOC-NOAA-2016-001453

Dear Mr. Schwartz:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on, July 19, 2016 in which you requested:

"All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities:

- 1. The Office of the Secretary of Commerce*
- 2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere*
- 3. Lois J. Schiffer, NOAA General Counsel*
- 4. Eileen Sobeck, Assistant Administrator for Fisheries*
- 5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs*
- 6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries*
- 7. John Bullard, Northeast Regional Administrator*
- 8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries*
- 9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center"*

This is interim release number one. We have located 19 documents responsive to your request. You are granted full access to those records, and a copy is enclosed.

Although we do not consider this to be a denial of your request, you have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230



An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov

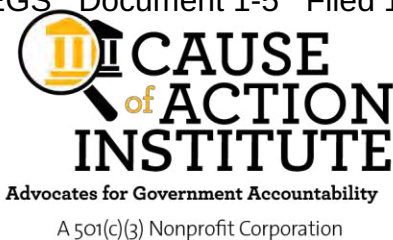
Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Amanda Patterson at Amanda.Patterson@NOAA.gov or call (978) 281-9210, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,

Amanda J. Patterson, MLS
FOIA Coordinator, Greater Atlantic Region

EXHIBIT
5



September 26, 2016

VIA ELECTRONIC MAIL

Assistant General Counsel for Litigation, Employment, and Oversight
ATTN: Freedom of Information Act Appeal
U.S. Department of Commerce
14th St. & Constitution Ave., N.W., Rm. 5875
Washington, D.C. 20230
E-mail: FOIAAppeals@doc.gov

Re: Freedom of Information Act Appeal, Request No. 2016-001453

Dear Appeals Officer:

This is a timely administrative appeal from the interim response of the National Oceanic and Atmospheric Administration (“NOAA”) to the July 13, 2016 Cause of Action Institute (“CoA Institute”) Freedom of Information Act (“FOIA”) request no. 2016-001453. Specifically, CoA Institute appeals the redaction of portions of responsive records as “non-responsive.”

Procedural Background

On July 13, 2016, CoA Institute submitted a FOIA request to NOAA.¹ The request sought various records concerning the appointment or reappointment of members to the New England Fishery Management Council. CoA Institute also requested a public interest fee waiver and treatment as a representative of the news media for fee purposes.²

NOAA acknowledged receipt of the CoA Institute FOIA request on July 29, 2016, assigned it tracking number 2016-001453, and invoked “unusual circumstances” to extend its response deadline by ten (10) business days.³ On August 15, 2016, NOAA issued an initial determination and release of responsive records, indicating that it had “located 19 documents,” to which CoA Institute was “granted full access.”⁴ In fact, however, three (3) documents, totaling six (6) pages, contained partial redactions marked as “non-responsive.” CoA Institute files this timely appeal from these “non-responsive” redactions.

Argument

NOAA must reprocess these three records with portions it redacted as “non-responsive.” As the D.C. Circuit recently decided in *American Immigration Lawyers Association v. Executive Office for Immigration Review*, there is “no statutory basis for redacting ostensibly non-responsive information from a record deemed responsive. . . . [O]nce the government concludes

¹ Letter from CoA Inst. to NOAA (July 13, 2016) (attached as Exhibit 1).

² *Id.*

³ Letter from Amanda J. Patterson, NOAA, to CoA Inst. (July 29, 2016) (attached as Exhibit 2).

⁴ Letter from Amanda J. Patterson, NOAA, to CoA Inst. (Aug. 15, 2016) (attached as Exhibit 3). To date, NOAA has yet to issue any determination on the CoA Institute fee category and public interest fee waiver requests.

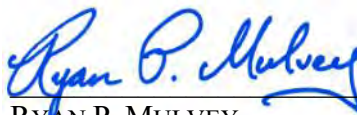
that a particular record is responsive to a disclosure request, the sole basis on which it may withhold particular information within that record is if the information falls within one of the statutory exemptions[.]”⁵ The records at issue include an e-mail from Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries at the Greater Atlantic Regional Fisheries Office⁶; an e-mail from Peter Christopher, Team Supervisor in the Sustainable Fisheries Division of the Greater Atlantic Regional Fisheries Office⁷; and a list of Congressional endorsements for appointments to the New England Fishery Management Council.⁸

The D.C. Circuit rejected the use of “non-responsive” as an effective tenth exemption because the “sole FOIA provision enabling the government to withhold responsive records is section 552(b), which sets forth the nine statutory exemptions.”⁹ The FOIA “does not provide for withholding responsive but non-exempt records or for redacting nonexempt information within responsive records.”¹⁰ When NOAA “identifies a record it deems responsive to a FOIA request, the statute compels disclosure of the responsive record *i.e.*, as a unit except insofar as the agency may redact information falling within a statutory exemption.”¹¹ Such an approach was not taken with respect to the records at issue.¹² NOAA must review and release all non-exempt material contained in these documents.

Conclusion

The NOAA response to the CoA Institute FOIA request is inadequate. The agency has misunderstood the availability of “non-responsive” as a designation to withhold portions of records. NOAA should re-process the three records at issue and refrain from redacting material as “non-responsive” in any future productions.

Thank you for your attention to this matter. If you have any questions about this appeal or the underlying request, please contact me by telephone at (202) 499-4232 or by e-mail at ryan.mulvey@causeofaction.org.



RYAN P. MULVEY
COUNSEL

cc: Amanda J. Patterson, FOIA Coordinator, NMFS, Greater Atlantic Region

⁵ *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review*, No. 15-5201, 2016 WL 4056405, at *1 (D.C. Cir. July 29, 2016), slip op. available at <http://coainst.org/2aZCRgT>.

⁶ E-mail from Michael Pentony, Greater Atl. Reg’l Fisheries Office, to Michael Ruccio, *et al.* (Apr. 8, 2016) (attached as Exhibit 4).

⁷ E-mail from Peter Christopher, Greater Atl. Reg’l Fisheries Office, to Michael Pentony, Greater Atl. Reg’l Fisheries Office (Apr. 11, 2016) (attached as Exhibit 5).

⁸ 2016 Regional Fishery Management Councils Congressional Endorsements (attached as Exhibit 6).

⁹ *Am. Immigration Lawyers Ass’n*, 2016 WL 4056405 at *1.

¹⁰ *Id.* at 8.

¹¹ *Id.*

¹² See Exs. 4–6, *supra* notes 6–8.

EXHIBIT

1



July 13, 2016

VIA CERTIFIED MAIL AND E-MAIL

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910
FOIA@noaa.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

I write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), CoA Institute hereby requests access to records maintained by the National Oceanic and Atmospheric Administration (“NOAA”).

CoA Institute is investigating recent appointments to the New England Fishery Management Council, a regulatory body created by the Magnuson-Stevens Fishery Conservation and Management Act. *See* 16 U.S.C. § 1852. Voting members of the Council are appointed to staggered three-year terms by the Secretary of Commerce from lists of candidates submitted by the governors of States within the Council’s jurisdiction. *Id.* § 1852(b). To aid in its investigation, CoA Institute requests:

All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities:

¹ *See* CAUSE OF ACTION INSTITUTE, www.causeofaction.org.

1. The Office of the Secretary of Commerce
2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere
3. Lois J. Schiffer, NOAA General Counsel
4. Eileen Sobeck, Assistant Administrator for Fisheries
5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs
6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries
7. John Bullard, Northeast Regional Administrator
8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries
9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center

Request for a Public Interest Fee Waiver

CoA Institute requests a waiver of any and all applicable fees.² FOIA and applicable regulations provide that agencies shall furnish requested records without or at reduced charge if “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.”³ In this case, the requested records will shed light on “operations or activities of the government,” including potential abuses in determining the membership of the New England Council. Disclosure is likely to “contribute significantly” to public understanding of these matters because NOAA’s internal records and third-party communications on the subject have not been made publicly available. CoA Institute is interested in educating the public about NOAA’s decision-making, and the requested records are likely to contribute to that effort and attract public interest.

CoA Institute has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. The CoA Institute staff has significant experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through CoA Institute’s regularly published online newsletter, memoranda, reports, or press releases. Further, CoA Institute, a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, has no commercial interest in making this request.

Request To Be Classified as a Representative of the News Media

For fee status purposes, CoA Institute also qualifies as a “representative of the news media” under FOIA.⁴ As the D.C. Circuit recently held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.⁵ CoA Institute satisfies this test because it gathers information of potential interest to a segment of the public,

² 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11 (a).

³ 5 U.S.C. § 552(a)(4)(A)(iii); *see Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

⁴ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 15 C.F.R. § 4.11(b)(6).

⁵ *See Cause of Action*, 799 F.3d at 1121.

National Oceanic and Atmospheric Administration

July 13, 2016

Page 3

uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.⁶ Although it is not required by the statute, CoA Institute gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. CoA Institute does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.⁷ These distinct works are distributed to the public through various media, including CoA Institute's website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a "representative of the news media" contemplates that organizations such as CoA Institute, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."⁸ In light of the foregoing, numerous federal agencies have appropriately recognized CoA Institute's news media status in connection with its FOIA requests.⁹

⁶ Cause of Action notes that the agency's definition of "representative of the news media" (15 C.F.R. § 4.11(b)(6)) is in conflict with the statutory definition and controlling case law. The agency has improperly retained the outdated "organized and operated" standard that Congress abrogated when it provided a statutory definition in the OPEN Government Act of 2007. *Id.* at 1125 ("Congress . . . omitted the 'organized and operated' language when it enacted the statutory definition in 2007. . . . [Therefore,] there is no basis for adding an 'organized and operated' requirement to the statutory definition."). Under either definition, Cause of Action qualifies as a representative of the news media.

⁷ See, e.g., *Cause of Action Testifies Before Congress on Questionable White House Detail Program*, CAUSE OF ACTION (May 19, 2015), available at <http://goo.gl/Byditl>; *CAUSE OF ACTION, 2015 GRADING THE GOVERNMENT REPORT CARD* (Mar. 16, 2015), available at <http://goo.gl/MqObwV>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com*, CAUSE OF ACTION (Sept. 8, 2014), available at <http://goo.gl/935qAi>; *CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS* (Mar. 18, 2014), available at <http://goo.gl/BiaEaH>; *CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM* (Sept. 23, 2013), available at <http://goo.gl/N0xSvs>; *CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I* (Aug. 2, 2013), available at <http://goo.gl/GpP1wR>.

⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

⁹ See, e.g., FOIA Request CFPB-2016-222-F, Consumer Fin. Prot. Bureau (Apr. 20, 2016); FOIA Request CFPB-2016-207-F, Consumer Fin. Prot. Bureau (Apr. 14, 2016); FOIA Request 796939, Dep't of Labor (Mar. 7, 2016); FOIA Request 2015-HQFO-00691, Dep't of Homeland Sec. (Sept. 22, 2015); FOIA Request F-2015-12930, Dept. of State (Sept. 2, 2015); FOIA Request 14-401-F, Dep't of Educ. (Aug. 13, 2015); FOIA Request HQ-2015-01689-F, Dep't of Energy (Aug. 7, 2015); FOIA Request 2015-OSEC-04996-F, Dep't of Agric. (Aug. 6, 2015); FOIA Request OS-2015-00419, Dep't of Interior (Aug. 3, 2015); FOIA Request 780831, Dep't of Labor (Jul 23, 2015); FOIA Request 15-05002, Sec. & Exch. Comm'n (July 23, 2015); FOIA Request 145-FOI-13785, Dep't of Justice (Jun. 16, 2015); FOIA Request 15-00326-F, Dep't of Educ. (Apr. 08, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm'n (Feb. 13, 2015); FOIA Request HQ-2015-00248, Dep't of Energy (Nat'l Headquarters) (Dec. 15, 2014); FOIA Request F-2015-106, Fed. Comm'n Comm'n (Dec. 12, 2014); FOIA Request HQ-2015-00245-F, Dep't of Energy (Dec. 4, 2014); FOIA Request F-2014-21360, Dep't of State, (Dec. 3, 2014); FOIA Request LR-2015-0115, Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, Dep't of Interior (Office of Sec'y) (Nov. 20, 2014); FOIA Request CFPB-2015-049-F, Consumer Fin. Prot. Bureau (Nov. 19, 2014); FOIA Request GO-14-307, Dep't of Energy (Nat'l Renewable Energy Lab.) (Aug. 28, 2014); FOIA Request HQ-2014-01580-F, Dep't of Energy (Nat'l Headquarters) (Aug. 14, 2014); FOIA Request LR-20140441, Nat'l Labor Relations Bd. (June 4, 2014); FOIA Request 14-01095, Sec. & Exch. Comm'n (May 7, 2014); FOIA Request 2014-4QFO-00236, Dep't of Homeland Sec. (Jan. 8, 2014); FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013);

National Oceanic and Atmospheric Administration
 July 13, 2016
 Page 4

CoA Institute has no commercial interest in the requested documents. CoA Institute, as a nonprofit organization, did not receive financial compensation in submitting this request, and it will not receive financial compensation from the intended use of the requested records. CoA Institute submits this requests on its own behalf and in pursuit of its government accountability mission, not on behalf of any other party, including any CoA Institute client. CoA Institute primarily intends to use the requested records for investigative and educational purposes.

CoA Institute represents the plaintiffs in *Goethel v. Pritzker*, No. 15-497 (D.N.H.), which involves various legal challenges to programs enacted by the New England Council. In addition, Ellen Goethel, the wife of plaintiff David Goethel, is now ended her term as a member of the New England Council. Participation in litigation, however, does not establish a commercial interest in requested documents,¹⁰ and as set forth above, CoA Institute is the relevant requester — not the *Goethel* plaintiffs. CoA Institute has ethical obligations to its clients that may require it to use the requested records in litigation, but that is not the primary purpose of the requests, which are instead sought for CoA Institute's investigative efforts and educational mission rather than for any party's personal use or commercial gain.¹¹ At any rate, the parties in *Goethel* case have completed summary judgment briefing based on the certified administrative record produced by the defendant agencies, and it is unlikely that the parties will seek to introduce additional information.

Record Preservation Requirement

CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on CoA Institute's request and any administrative remedies for appeal have been exhausted. It is unlawful for BOEM to destroy or dispose of any record subject to a FOIA request.¹²

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be

FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

¹⁰ Cf. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987); *Muffoletto v. Sessions*, 760 F. Supp. 268, 277–78 (E.D.N.Y. 1991).

¹¹ See Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10,012, 10,018 (Mar. 27, 1987).

¹² See 15 C.F.R. § 4.3(d) (“Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.”); see also 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record . . . ; and disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); *Chambers v. Dep't of the Interior*, 568 F.3d 998, 1004–05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 41–44 (D.D.C. 1998).

National Oceanic and Atmospheric Administration


July 13, 2016

Page 5

produced more readily, CoA Institute requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by telephone at (202) 499-4232 or by e-mail at stephen.schwartz@causeofaction.org. Thank you for your attention to this matter.

Sincerely,


STEPHEN S. SCHWARTZ
COUNSEL

10/11/16

EXHIBIT

2



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

July 29, 2016

Stephen S. Schwartz
Cause of Action Institute
1875 Eye St. N.W.,
Suite 800
Washington, DC 20006

Re: FOIA Request DOC-NOAA-2016-001453

Dear Mr. Schwartz:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request.

Your request was entered into FOIAonline, our request tracking database, on July 19, 2016. Your request tracking number is DOC-NOAA-2016-001453.

You requested:

"All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities:

- 1. The Office of the Secretary of Commerce*
- 2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere*
- 3. Lois J. Schiffer, NOAA General Counsel*
- 4. Eileen Sobeck, Assistant Administrator for Fisheries*
- 5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs*
- 6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries*
- 7. John Bullard, Northeast Regional Administrator*
- 8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries*
- 9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center"*

15 C.F.R. 4.6(d) (2) allows an agency to extend the FOIA response deadline by ten business days for unusual circumstances. Due to *the need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request*; we are choosing to invoke this 10 day extension and anticipate completing your request by August 30, 2016.

Please contact us if you are interested in narrowing the scope of your request. Narrowing your request will help expedite its processing.



If you have questions regarding your request, please contact Amanda Patterson at Amanda.Patterson@NOAA.gov or call (978) 281-9210.

Sincerely,

Amanda J. Patterson, MLS
FOIA Coordinator, Greater Atlantic Region

EXHIBIT

3



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

Stephen S. Schwartz
Cause of Action Institute
1875 Eye St. N.W.,
Suite 800
Washington, DC 20006

Aug 30, 2016

Re: FOIA Request DOC-NOAA-2016-001453

Dear Mr. Schwartz:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on, July 19, 2016 in which you requested:

"All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities:

- 1. The Office of the Secretary of Commerce*
- 2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere*
- 3. Lois J. Schiffer, NOAA General Counsel*
- 4. Eileen Sobeck, Assistant Administrator for Fisheries*
- 5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs*
- 6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries*
- 7. John Bullard, Northeast Regional Administrator*
- 8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries*
- 9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center"*

This is interim release number one. We have located 19 documents responsive to your request. You are granted full access to those records, and a copy is enclosed.

Although we do not consider this to be a denial of your request, you have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230



An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov

Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Amanda Patterson at Amanda.Patterson@NOAA.gov or call (978) 281-9210, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,

Amanda J. Patterson, MLS
FOIA Coordinator, Greater Atlantic Region

EXHIBIT

4

Michael Pentony - NOAA Federal

From: Michael Pentony NOAA Federal
Sent: Friday, April 08, 2016 2:32 PM
To: Michael Ruccio; Moira Kelly; Peter Christopher; Sarah Heil
Subject: CLOSE HOLD Council Nominees

The list of Council nominees is now public, and John and I will be meeting in the coming weeks to discuss the nominees and develop recommendations for Eileen. In prep for that, I'd appreciate any thoughts, insights, experiences you can share about any of the nominees. Here's who we have:

NEFMC Three incumbents' terms are up: Goethel (1st); Sissenwine (1st); and Blount (3rd). Goethel is obligatory NH; the other two are at large. Blount, obviously, is done.

Maine no nominees

New Hampshire Ellen Goethel; Dave Goethel; Mark Godfroy

Massachusetts James "Dan" Martino; Brendan Mitchell; Patrick Paquette; Charles Quinn; and Mike Sissenwine

Rhode Island Rich Bellavance; Zachary Harvey; and David Monti

Connecticut no nominees

Thoughts: I suspect there's no reason Sissenwine wouldn't be reappointed; so maybe don't spend too much time on the MA nominees. I really don't know anything about the RI nominees, so please help there. NH should be interesting. I can't see picking David over Ellen, but it could be very helpful to have some insight on Godfroy.

[Redacted] *Non-responsive* [Redacted]

[Redacted] *Non-responsive*

[Redacted] *Non responsive*

[Redacted] *Non-responsive*

[Redacted] *Non-responsive* [Redacted]

[Redacted] *Non-responsive*

[Redacted] *Non responsive*

[Redacted] *Non responsive*

Non-responsive

While it's very helpful if you have thoughts/insight/etc. on these candidates, it's also helpful to know if you've never heard of them.

Thanks,

Mike

Michael Pentony
Assistant Regional Administrator for Sustainable Fisheries
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930
Phone: 978 281 9283
Fax: 978 281 9135
Web: greateratlantic.fisheries.noaa.gov

EXHIBIT

5

Peter Christopher - NOAA Federal

From: Peter Christopher NOAA Federal
Sent: Monday, April 11, 2016 3:44 PM
To: Michael Pentony NOAA Federal
Cc: Michael Ruccio; Moira Kelly; Sarah Heil
Subject: Re: CLOSE HOLD Council Nominees

Mike,
In this list of nominees, I've only heard of Goethals, Paquette, Quinn, Sissenwine, *non responsive*
Panacek, and *non respon...* so I have no input on RI, *non respon...*

[Redacted]
non responsive
[Redacted]

Pete

On Fri, Apr 8, 2016 at 2:31 PM, Michael Pentony NOAA Federal <michael.pentony@noaa.gov> wrote:

The list of Council nominees is now public, and John and I will be meeting in the coming weeks to discuss the nominees and develop recommendations for Eileen. In prep for that, I'd appreciate any thoughts, insights, experiences you can share about any of the nominees. Here's who we have:

NEFMC Three incumbents' terms are up: Goethel (1st); Sissenwine (1st); and Blount (3rd). Goethel is obligatory NH; the other two are at large. Blount, obviously, is done.

Maine no nominees

New Hampshire Ellen Goethel; Dave Goethel; Mark Godfroy

Massachusetts James "Dan" Martino; Brendan Mitchell; Patrick Paquette; Charles Quinn; and Mike Sissenwine

Rhode Island Rich Bellavance; Zachary Harvey; and David Monti

Connecticut no nominees

Thoughts: I suspect there's no reason Sissenwine wouldn't be reappointed; so maybe don't spend too much time on the MA nominees. I really don't know anything about the RI nominees, so please help there. NH should be interesting. I can't see picking David over Ellen, but it could be very helpful to have some insight on Godfroy.

[Redacted]
non responsive
[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *non responsive* [REDACTED]

While it's very helpful if you have thoughts/insight/etc. on these candidates, it's also helpful to know if you've never heard of them.

Thanks,

Mike

Michael Pentony
Assistant Regional Administrator for Sustainable Fisheries
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930
Phone: 978 281 9283
Fax: 978 281 9135
Web: greateratlantic.fisheries.noaa.gov

Peter Christopher
Senior Fishery Policy Analyst
National Marine Fisheries Service
Sustainable Fisheries Division
Greater Atlantic Region Fisheries Office
978 281 9288



EXHIBIT

6

**2016 REGIONAL FISHERY MANAGEMENT COUNCILS
CONGRESSIONAL ENDORSEMENTS**

Updated April 27, 2016

NEW ENGLAND COUNCIL

Richard John Bellavance, Jr./RI

Rep. James R. Langevin/RI/D
Rep. David N. Cicilline/RI/D
Sen. Sheldon Whitehouse/RI/D
Sen. Jack Reed/RI/D

Zachary J. Harvey/RI

Rep. James R. Langevin/RI/D
Rep. David N. Cicilline/RI/D
Sen. Sheldon Whitehouse/RI/D
Sen. Jack Reed/RI/D

David Paul Monti/RI

Rep. James R. Langevin/RI/D
Rep. David N. Cicilline/RI/D
Sen. Sheldon Whitehouse/RI/D
Sen. Jack Reed/RI/D

Ellen Goethel/NH

Sen. Kelly A. Ayotte/NH/R

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Non-responsive

Non responsive

EXHIBIT

6

Ryan Mulvey

From: Kelton, Cindy (Federal) <ckelton@doc.gov>
Sent: Thursday, September 29, 2016 9:50 AM
To: Ryan Mulvey
Subject: Cause of Action FOIA Appeal - Request No. 2016-001453 - Acknowledgement

**eneral
Couns
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Litigat
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Emplo
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Oversi
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**U.S. Department of Commerce
14th and Constitution Avenue NW Room 5898-C
Washington, DC 20230**

Dear Mr. Mulvey:

This is to acknowledge receipt of your Freedom of Information Act (5 U.S.C. § 552) (FOIA) appeal email dated September 26, 2016. In accordance with the FOIA and Departmental regulations, a final determination will be issued by the Assistant General Counsel for Litigation, Employment and Oversight. Your appeal has been assigned to Counsel.

If you have any questions about this matter, you may contact me at the above address or at 202-482-5772.

Thanks,

***Cindy Kelton
Administrative Assistant
Department of Commerce
Office of General Counsel
LEO/FOIA Group
202-482-8103***

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

From: Ryan Mulvey [mailto:ryan.mulvey@causeofaction.org]
Sent: Monday, September 26, 2016 12:59 PM
To: Appeals, FOIA <foiaappeals@doc.gov>
Cc: Patterson, Amanda (Federal) <Amanda.Patterson@noaa.gov>
Subject: Cause of Action FOIA Appeal - Request No. 2016-001453

Dear Appeals Officer:

Please find attached to this e-mail an administrative appeal of FOIA request No. 2016-001453, which was submitted to NOAA on July 13, 2016.

Thank you.

Best regards,

Ryan Mulvey

cc: Amanda Patterson, NOAA FOIA

Ryan P. Mulvey | Counsel

Cause of Action Institute
1875 Eye Street NW, Suite 800
Washington, D.C. 20006
(o) 202.400.2729 / (c) 202.603.7698
Ryan.Mulvey@causeofaction.org

Admitted to the practice of law in New York State and the District of Columbia



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EXHIBIT

7

Request Details

Tracking Number : DOC-NOAA-2016-001453

Submitted Evaluation Assignment Processing Closed

Request Information

Full Name : Under Agency Review Date Submitted : 07/14/2016
 Organization : Under Agency Review Estimated Date of Completion : August 30, 2016
 Final Disposition : Undetermined

Description :

All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities: 1. The Office of the Secretary of Commerce 2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere 3. Lois J. Schiffer, NOAA General Counsel 4. Eileen Sobeck, Assistant Administrator for Fisheries 5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs 6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries 7. John Bullard, Northeast Regional Administrator 8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries 9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center

Released Records

Filter by Title :

SUBMIT CLEAR

Results 1

One record found.

1

Download	Title	Type	Size (MB)	Release Date	Released With
<input type="checkbox"/>	Interim Release 1 UR	ZIP	4.31	08/31/2016	Request

One record found.

1

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, November 7, 2016 10:07 AM
To: John Almeida - NOAA Federal; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal; Chua, Alvin; McKenna, Alice; Samuel Dixon - NOAA Affiliate; Stacey Nathanson - NOAA Federal
Cc: Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate; Dennis Morgan - NOAA Federal; Velna Bullock - NOAA Federal; James LeDuc - NOAA Federal; Steven Goodman - NOAA Federal
Subject: New Cause of Action FOIA Requests
Attachments: 01-Complaint.pdf

Good Morning--

Just for awareness, NOAA has just received 3 new additional requests from Cause of Action. The three respective requests are generally seeking the following records:

1. Designations and proposals for designations under the Antiquities Act of 1906 regarding marine monuments referenced in an Oct. 7, 2015 letter from the House Committee on Natural Resources.
2. Records regarding a NOAA Town Hall Meeting on September 15, 2015, and a public event by the Conservation Law Foundation seeking designation of the Atlantic Coast's first Marine National Monument.
3. Records of communications referencing the use of the Antiquities Act to create a national monument in the Atlantic Ocean.

(b)(5) [Redacted]

[Redacted]

Thanks everyone--

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CAUSE OF ACTION INSTITUTE)	
1875 Eye Street, N.W., Suite 800)	
Washington, D.C. 20006,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 16-2178
)	
NATIONAL OCEANIC & ATMOSPHERIC)	
ADMIN.)	
United States Department of Commerce)	
1401 Constitution Avenue, N.W., Room 5128)	
Washington, D.C. 20230,)	
)	
Defendants.)	

COMPLAINT

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking access to records requested by Plaintiff Cause of Action Institute (“CoA Institute”) and improperly withheld by Defendant National Oceanic and Atmospheric Administration (“NOAA”). The records at issue concern potential abuses in determining the membership of the New England Fishery Management Council (“NEFMC”), a regulatory body created by the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*

NATURE OF THE ACTION

1. The Magnuson-Stevens Fishery Conservation and Management Act (“MSA”) establishes the basis for the federal management of domestic fisheries in the United States. 16 U.S.C. §§ 1801(a)(6), (b)(1), (b)(3). The MSA provides for eight Fishery Management Councils (“FMCs”), each charged with regulating a region of the national coastal waters. The NEFMC is

the FMC relevant to this lawsuit, and it includes the coastal waters of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut. 16 U.S.C. § 1852(a)(1)(A).

2. The NEFMC is composed of eighteen (18) voting members, *id.*, including twelve (12) appointees chosen by the Secretary of Commerce from lists of nominees provided by the governors of states within the boundaries of the FMC. *Id.* §§ 1852(b)(1)(C), (b)(2)(A) (C). The NEFMC includes the “principal State official with marine fishery management responsibility and expertise” from each state, *id.* § 1852(b)(1)(A), as well as the Administrator of the National Marine Fisheries Service (“NMFS”) Mid-Atlantic Regional Office, or his designee. *Id.* § 1852(b)(1)(B).

3. Some commentators have suggested that the membership of the NEFMC and, indeed, the membership of all the regional FMCs is not representative of the fishing industry. Representation of the fishing industry is “generally skewed towards the larger corporate interests that support larger sized vessels, whereas the small-scale vessel fleets that are the traditional core of coastal communities (and more likely to have conservation interests) are often less represented[.]” Thomas A. Okey, *Membership in the Eight Regional Fishery Management Councils in the United States: Are Special Interests Over-Represented?*, 27 *Marine Pol’y* 193, 199 (2003).

4. Although the FMCs are supervised by NMFS, and ultimately by the Secretary of Commerce, their members exercise significant independent power. They propose Fishery Management Plans (“FMPs”), amendments, and framework adjustments; they conduct hearings; and they determine annual catch limits. *See* 16 U.S.C. § 1852(h). The FMCs even have the ability to constrain the Secretary of Commerce. *See* 16 U.S.C. § 1854(a) (Secretary may only

approve, disapprove, or partially approve FMPs given to him; he may not modify them on his own authority); *id.* § 1854(h) (Secretary may not repeal or revoke FMPs without FMC approval).

5. The FOIA request at issue here is aimed at providing transparency into how the Secretary of Commerce determines the membership of the FMCs, including the NEFMC. NOAA has not disclosed records about this process to the public before, and there is danger for politicization in how members are actually chosen.

6. The records at issue in this case, which include records of communication between high-ranking agency officials, will permit the public to understand how the most recent round of membership selection for the NEFMC was handled, and whether that process was at all tinged by political considerations or other untoward government action.

JURISDICTION AND VENUE

7. Jurisdiction is asserted pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 552(a)(4)(B), (a)(6)(E)(iii).

8. Venue is proper pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).

PARTIES

9. CoA Institute is a non-profit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair. In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. CoA Institute regularly requests access under the FOIA to the public records of federal agencies, entities, and offices, including NOAA, and disseminates its findings, analysis, and commentary to the general public.

10. NOAA is an agency within the meaning of 5 U.S.C. § 552(f)(1). NOAA has possession, custody, and control of the records to which CoA Institute seeks access and that are the subject of this Complaint.

FACTS

11. By letter, dated July 13, 2016, CoA Institute submitted a FOIA request to NOAA seeking access to “[a]ll documents related to the appointment or reappointment of members of the New England Fishery Management Council[.]” Ex. 1 at 1. CoA Institute further specified that its request included “all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication.” Ex. 1 at 1. The time period for the request was “November 1, 2015 to the present.” Ex. 1 at 1.

12. CoA Institute provided a non-exhaustive list of potential record custodians whose correspondence on personal or official e-mail accounts could be responsive to the July 13, 2016 FOIA request. *See* Ex. 1 at 2.

13. CoA Institute also requested a public interest fee waiver and classification as a representative of the news media for fee purposes. Ex. 1 at 2 4.

14. By letter, dated July 29, 2016, NOAA informed CoA Institute that it received the FOIA request on July 19, 2016. Ex. 2 at 1. NOAA indicated that it would invoke the ten-day automatic statutory extension of its response deadline due to “unusual circumstances,” namely, the “need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request[.]” Ex. 2 at 1.

15. This same letter assigned the CoA Institute FOIA request the tracking number “DOC-NOAA-2016-001453.” Ex. 2 at 1.

16. On August 1, 2016, NOAA granted the CoA Institute request for a public interest fee waiver. Ex. 3. The agency did not issue a determination on the CoA Institute request for categorization as a representative of the news media for fee purposes.

17. By letter, dated August 30, 2016, NOAA released its first interim response and production of responsive records. Ex. 4. The agency indicated that it “located 19 documents,” to which CoA Institute was “granted full access.” Ex. 4. The interim production also provided CoA Institute with appeal rights. Ex. 4.

18. On September 26, 2016, CoA Institute filed an administrative appeal from the August 30, 2016 interim production because NOAA improperly withheld material from three (3) responsive records. Ex. 5. The material in question was redacted as “non-responsive.” Ex. 5.

19. The Department of Commerce (“DOC”) acknowledged receipt of the CoA Institute administrative appeal on September 29, 2016. Ex. 6. The agency has failed to provide a final response or to provide an estimate date of completion for processing the appeal.

20. To date, NOAA has failed to provide any additional interim responses or productions of responsive records, let alone a final determination. According to FOIAonline, the current estimated date of completion for the CoA Institute request is “August 30, 2016.” Ex. 7.

COUNT 1

Violation of the FOIA: Failure to Comply with Statutory Deadlines

21. CoA Institute repeats paragraphs 1 through 20.

22. The FOIA requires an agency to respond to a record request within twenty (20) business days or, in “unusual circumstances,” within thirty (30) business days. 5 U.S.C. §§ 552(a)(6)(A) (B). If an agency requires additional time, it must provide the requester “an

opportunity to arrange . . . an alternative time frame for processing the request[.]” *Id.*

§ 552(a)(6)(B)(ii).

23. More than thirty (30) business days have passed since NOAA received CoA Institute’s FOIA request on July 19, 2016.

24. NOAA has failed to issue a final determination on and promptly produce all records responsive to CoA Institute’s FOIA request within the applicable statutory time limits.

25. When attempting to cite “unusual circumstances,” NOAA failed to comply with the FOIA in that it never “arrange[d] . . . an alternative time frame” for responding to CoA Institute’s request, failed to issue an estimated date of completion, and did not invite CoA Institute to contact NOAA for the purposes of negotiating an “alternative” response date.

26. CoA Institute has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C).

RELIEF REQUESTED

WHEREFORE, CoA Institute respectfully requests and prays that this Court:

- a. Order NOAA to process the July 13, 2016 FOIA request and to make a final determination within twenty (20) business days of the date of the Order;
- b. Order NOAA to produce all responsive records promptly after issuing its final determination;
- c. Order NOAA to issue a *Vaughn* index accompanying the records produced and explaining each redaction or withholding, if applicable;¹

¹ See generally *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) (requiring an agency to prepare an index correlating each withheld document, or portion thereof, with a specific FOIA exemption and nondisclosure justification).

d. Award CoA Institute its costs and reasonable attorney fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

e. Grant such other relief as the Court may deem just and proper.

Dated: November 1, 2016

Respectfully submitted,

/s/ Ryan P. Mulvey

Ryan P. Mulvey

D.C. Bar No. 1024362

Eric R. Bolinder

D.C. Bar No. 1028335

CAUSE OF ACTION INSTITUTE

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Washington, D.C. 20006

Telephone: (202) 499-4232

Facsimile: (202) 330-5842

ryan.mulvey@causeofaction.org

eric.bolinder@causeofaction.org

Counsel for Plaintiff

Image not available for this document, ID: 0.7.3707.13330

**U.S. Department of Commerce
National Oceanic and Atmospheric Administration**



**Privacy Threshold Analysis
For OAR ARL (NOAA3040)**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA OAR ARL (NOAA3040)

Unique Project Identifier: NOAA3040

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose: The Office of Oceanic and Atmospheric Research’s Air Research Laboratory (ARL) is a research laboratory headquartered in College Park, Maryland with divisions in Oak Ridge, Tennessee (ATDD); Idaho Falls, Idaho (FRD); and Las Vegas, Nevada (SORL). ARL conducts research to gain new insights into atmospheric dispersion, atmospheric chemistry, climate change, and the complex behavior of the atmosphere near the Earth’s surface, called the atmospheric boundary layer. Its mission is to provide needed atmospheric information and tools to decision-makers and to the science community to improve the Nation’s ability to protect human health and the environment.

The E-Government Act of 2002 defines “information system” by reference to the definition section of Title 44 of the United States Code. The following is a summary of the definition: “Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. See: 44. U.S.C. § 3502(8).

Questionnaire:

1. What is the status of this information system?

- This is a new information system. *Continue to answer questions and complete certification.*
- This is an existing information system with changes that create new privacy risks. *Complete chart below, continue to answer questions, and complete certification.*

Changes That Create New Privacy Risks (CTCNPR)					
a. Conversions		d. Significant Merging		g. New Interagency Uses	
b. Anonymous to Non-Anonymous		e. New Public Access		h. Internal Flow or Collection	
c. Significant System Management Changes		f. Commercial Sources		i. Alteration in Character of Data	
j. Other changes that create new privacy risks (specify):					

This is an existing information system in which changes do not create new privacy risks. *Skip questions and complete certification.*

2. Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states "Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary." Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes. *Please describe the activities which may raise privacy concerns.*

No

3. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: "For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. "Commercial" is not confined to records that reveal basic commercial operations" but includes any records [or information] in which the submitter has a commercial interest" and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.)."

Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

Companies

Other business entities

No, this IT system does not collect any BII.

4. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc..."

Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

- DOC employees
- Contractors working on behalf of DOC
- Members of the public

No, this IT system does not collect any PII.

If the answer is “yes” to question 4a, please respond to the following questions.

4b. Does the IT system collect, maintain, or disseminate PII other than user ID?

Yes, the IT system collects, maintains, or disseminates PII other than user ID.

No, the user ID is the only PII collected, maintained, or disseminated by the IT system.

4c. Will the purpose for which the PII is collected, stored, used, processed, disclosed, or disseminated (context of use) cause the assignment of a higher PII confidentiality impact level?

Examples of context of use include, but are not limited to, law enforcement investigations, administration of benefits, contagious disease treatments, etc.

Yes, the context of use will cause the assignment of a higher PII confidentiality impact level.

No, the context of use will not cause the assignment of a higher PII confidentiality impact level.

If any of the answers to questions 2, 3, 4b, and/or 4c are “Yes,” a Privacy Impact Assessment (PIA) must be completed for the IT system. This PIA and the approved PIA must be a part of the IT system’s Assessment and Authorization Package.

CERTIFICATION

I certify the criteria implied by one or more of the questions above **apply** to the OAR ARL (NOAA3040) and as a consequence of this applicability, I will perform and document a PIA for this IT system.

I certify the criteria implied by the questions above **do not apply** to the OAR ARL (NOAA3040) and as a consequence of this non-applicability, a PIA for this IT system is not necessary.

Name of Information System Security Officer (ISSO) or System Owner (SO): Rick Jiang

Signature of ISSO or SO: JIANG.WEIFENG.13796 Digitally signed by JIANG.WEIFENG.1379621224
DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn JIANG.WEIFENG.1379621224
Date: 2016.06.24 10:02:42 -04'00' 21224 Date: _____

Name of Information Technology Security Officer (ITSO): Jeremy Warren

Signature of ITSO: WARREN.JEREMY.C.13 Digitally signed by WARREN.JEREMY.C.1397791897
DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn WARREN.JEREMY.C.1397791897
Date: 2016.08.23 10:33:53 -04'00' 97791897 Date: _____

Name of Authorizing Official (AO): Rick Artz

Signature of AO: ARTZ.RICHARD.S.1365848900 Digitally signed by ARTZ.RICHARD.S.1365848900
DN: c US, o U.S. Government, ou DoD, ou PKI, ou OTHER
cn ARTZ.RICHARD.S.1365848900
Date: 2016.06.24 09:44:44 -04'00' Date: _____

Name of Bureau Chief Privacy Officer (BCPO): Mark Graff

Signature of BCPO: GRAFF.MARK.HYRU Digitally signed by GRAFF.MARK.HYRUM.1514447892
DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn GRAFF.MARK.HYRUM.1514447892
Date: 2016.11.07 12:44:57 -05'00' M.1514447892 Date: _____

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, November 7, 2016 12:48 PM
To: Sarah Brabson - NOAA Federal
Subject: NOAA3070 PTA
Attachments: NOAA3070 OAR GFDL PTA +VR+jps Signed by ITSO mhg.pdf

Just curious on this one (b)(5)

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

**U.S. Department of Commerce
National Oceanic and Atmospheric Administration**



**Privacy Threshold Analysis
For OAR GFDL (NOAA3070)**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA OAR GFDL (NOAA3070)

Unique Project Identifier: NOAA3070

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose: The Office of Oceanic and Atmospheric Research’s Geophysical Fluid Dynamics Laboratory (GFDL) is general support facility. GFDL is engaged in comprehensive long lead-time research fundamental to NOAA's mission. Scientists at GFDL develop and use mathematical models and computer simulations to improve our understanding and prediction of the behavior of the atmosphere, the oceans, and climate. GFDL scientists focus on model-building relevant for society, such as hurricane research, prediction, and seasonal forecasting, and understanding global and regional climate change.

The primary function of NOAA3070 is to provide: 1) Local Area Network and Wide Area Network services within the NOAA3070 boundary only, which includes the office space areas of the GFDL facility, 2) VoIP, 3) Wireless Internet connectivity, 4) VTC, 5) Print services, 6) Co-location or hosting services. GFDL is located in Princeton, NJ in a leased facility.

The E-Government Act of 2002 defines “information system” by reference to the definition section of Title 44 of the United States Code. The following is a summary of the definition: “Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. See: 44. U.S.C. § 3502(8).

Questionnaire:

1. What is the status of this information system?

- This is a new information system. *Continue to answer questions and complete certification.*
- This is an existing information system with changes that create new privacy risks. *Complete chart below, continue to answer questions, and complete certification.*

Changes That Create New Privacy Risks (CTCNPR)					
a. Conversions		d. Significant Merging		g. New Interagency Uses	

b. Anonymous to Non-Anonymous		e. New Public Access		h. Internal Flow or Collection	
c. Significant System Management Changes		f. Commercial Sources		i. Alteration in Character of Data	
j. Other changes that create new privacy risks (specify):					

This is an existing information system in which changes do not create new privacy risks. *Skip questions and complete certification.*

2. Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states "Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary." Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes. *Please describe the activities which may raise privacy concerns.*

No

3. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: "For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. "Commercial" is not confined to records that reveal basic commercial operations" but includes any records [or information] in which the submitter has a commercial interest" and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.)."

Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

Companies

Other business entities

No, this IT system does not collect any BII.

4. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc..."

_____ Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

- _____ DOC employees
- _____ Contractors working on behalf of DOC
- _____ Members of the public

No, this IT system does not collect any PII.

If the answer is "yes" to question 4a, please respond to the following questions.

4b. Does the IT system collect, maintain, or disseminate PII other than user ID?

_____ Yes, the IT system collects, maintains, or disseminates PII other than user ID.

_____ No, the user ID is the only PII collected, maintained, or disseminated by the IT system.

4c. Will the purpose for which the PII is collected, stored, used, processed, disclosed, or disseminated (context of use) cause the assignment of a higher PII confidentiality impact level?

Examples of context of use include, but are not limited to, law enforcement investigations, administration of benefits, contagious disease treatments, etc.

_____ Yes, the context of use will cause the assignment of a higher PII confidentiality impact level.

_____ No, the context of use will not cause the assignment of a higher PII confidentiality impact level.

If any of the answers to questions 2, 3, 4b, and/or 4c are "Yes," a Privacy Impact Assessment (PIA) must be completed for the IT system. This PTA and the approved PIA must be a part of the IT system's Assessment and Authorization Package.

CERTIFICATION

I certify the criteria implied by one or more of the questions above **apply** to the OAR GFDL (NOAA3070) and as a consequence of this applicability, I will perform and document a PIA for this IT system.

I certify the criteria implied by the questions above **do not apply** to the OAR GFDL (NOAA3070) and as a consequence of this non-applicability, a PIA for this IT system is not necessary.


Name of Information System Security Officer (ISSO) or System Owner (SO): John Sheldon

Signature of ISSO or SO: SHELDON.JOHN.P.1365825 Digitally signed by SHELDON.JOHN.P.1365825935 Date: 2016.07.01 10:05:11 -04'00'

Name of Information Technology Security Officer (ITSO): Jeremy Warren

Signature of ITSO: WARREN.JEREMY.C.1 Digitally signed by WARREN.JEREMY.C.1397791897 DN: c US, o U.S. Government, ou DoD, ou PKI, ou OTHER, cn WARREN.JEREMY.C.1397791897 Date: 2016.08.23 10:32:41 -04'00' Date: _____

Name of Authorizing Official (AO): V. Ramaswamy

Signature of AO:  Date: 6/30/16

Name of Bureau Chief Privacy Officer (BCPO): Mark Graff

Signature of BCPO: GRAFF.MARK.HYRU Digitally signed by GRAFF.MARK.HYRU.1514447892 DN: c US, o U.S. Government, ou DoD, ou PKI, ou OTHER, cn GRAFF.MARK.HYRU.1514447892 Date: 2016.11.07 12:46:53 -05'00' Date: _____

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**U.S. Department of Commerce
National Oceanic and Atmospheric Administration**



**Privacy Threshold Analysis
For OAR PMEL (NOAA3100)**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA OAR PMEL (NOAA3100)

Unique Project Identifier: NOAA3100

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose: The Office of Oceanic and Atmospheric Research's Pacific Marine Environmental Laboratory (PMEL) is a federal laboratory that makes critical observations and conducts groundbreaking research to advance our knowledge of the global ocean and its interactions with the earth, atmosphere, ecosystems, and climate. PMEL's mission is to a) observe, analyze, and predict oceanic and atmospheric phenomena, b) lead the development and deployment of innovative technologies, c) identify and understand ocean-related issues of major consequence, and d) inform society with well-documented, high quality science. Key research areas at PMEL include ocean acidification, tsunami detection and forecasting, hydrothermal vent systems, fisheries oceanography, and long term climate monitoring and analysis.

NOAA3100 is a General Support System, whose purpose is to provide information technology services required to achieve the mission of the programs in Seattle, WA and Newport OR. It provides central computing resources needed to conduct interdisciplinary scientific investigations in oceanography, marine meteorology, and related subjects to enhance the understanding of the complex physical and geochemical processes that characterize the marine environment. The system supports administrative and engineering functions.

The E-Government Act of 2002 defines "information system" by reference to the definition section of Title 44 of the United States Code. The following is a summary of the definition: "Information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. See: 44. U.S.C. § 3502(8).

Questionnaire:

1. What is the status of this information system?

_____ This is a new information system. *Continue to answer questions and complete certification.*

This is an existing information system with changes that create new privacy risks.
Complete chart below, continue to answer questions, and complete certification.

Changes That Create New Privacy Risks (CTCNPR)			
a. Conversions		d. Significant Merging	g. New Interagency Uses
b. Anonymous to Non-Anonymous		e. New Public Access	h. Internal Flow or Collection
c. Significant System Management Changes		f. Commercial Sources	i. Alteration in Character of Data
j. Other changes that create new privacy risks (specify):			

This is an existing information system in which changes do not create new privacy risks. *Skip questions and complete certification.*

2. Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states “Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary.” Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes. *Please describe the activities which may raise privacy concerns.*

No

3. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: “For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. “Commercial” is not confined to records that reveal basic commercial operations” but includes any records [or information] in which the submitter has a commercial interest” and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.).”

Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

Companies

Other business entities

No, this IT system does not collect any BII.

4. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc..."

_____ Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

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- _____ Contractors working on behalf of DOC
- _____ Members of the public

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If the answer is "yes" to question 4a, please respond to the following questions.

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If any of the answers to questions 2, 3, 4b, and/or 4c are “Yes,” a Privacy Impact Assessment (PIA) must be completed for the IT system. This PTA and the approved PIA must be a part of the IT system’s Assessment and Authorization Package.

CERTIFICATION

I certify the criteria implied by one or more of the questions above **apply** to the OAR PMEL (NOAA3100) and as a consequence of this applicability, I will perform and document a PIA for this IT system.

I certify the criteria implied by the questions above **do not apply** to the OAR PMEL (NOAA3100) and as a consequence of this non-applicability, a PIA for this IT system is not necessary.

Name of Information System Security Officer (ISSO) or System Owner (SO): Nancy Soreide

Signature of ISSO or SO: SOREIDE.NANCY.N.1365837836
Digitally signed by SOREIDE.NANCY.N.1365837836
Date: 2016.07.06 10:49:39 -07'00' Date: _____

Name of Information Technology Security Officer (ITSO): Jeremy Warren

Signature of ITSO: WARREN.JEREMY.C.1397791897
Digitally signed by WARREN.JEREMY.C.1397791897
DN: c US, o U.S. Government, ou DoD, ou PKI, ou OTHER, cn WARREN.JEREMY.C.1397791897
Date: 2016.08.23 10:31:56 -04'00' Date: _____

Name of Authorizing Official (AO): Chris Sabine

Signature of AO: SABINE.CHRISTOPHER.L.1365865376
Digitally signed by SABINE.CHRISTOPHER.L.1365865376
DN: c US, o U.S. Government, ou DoD, ou PKI, ou OTHER, cn SABINE.CHRISTOPHER.L.1365865376
Date: 2016.09.29 08:57:31 -07'00' Date: _____

Name of Bureau Chief Privacy Officer (BCPO): Mark Graff

Signature of BCPO: GRAFF.MARK.HYRUM.1514447892
Digitally signed by GRAFF.MARK.HYRUM.1514447892
DN: c US, o U.S. Government, ou DoD, ou PKI, ou OTHER, cn GRAFF.MARK.HYRUM.1514447892
Date: 2016.11.07 12:49:28 -05'00' Date: _____

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(b) (5)

From: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Sent: Monday, November 7, 2016 2:26 PM
To: Mark Graff - NOAA Federal
Subject: RE: UPDATES on DOC-NOAA-2015-001376
Attachments: DRAFTPart5 FAL.DOCX

Not that one...this one sorry! Attached

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Monday, November 07, 2016 2:24 PM
To: Arlyn Penaranda - NOAA Federal
Subject: Re: UPDATES on DOC-NOAA-2015-001376

I woul (b)(5)

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

On Mon, Nov 7, 2016 at 1:25 PM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Sorry (b)(5)

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Monday, November 07, 2016 1:21 PM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Samuel Dixon - NOAA Affiliate; Lorna Martin-Gross - N... (lorna.martin-gross@noaa.gov)
Subject: RE: UPDATES on DOC-NOAA-2015-001376

Mark,

(b)(5)

(b) (5)

Thanks in advance!

Arlyn

From: Mark Graff - NOAA Federal [<mailto:mark.graff@noaa.gov>]
Sent: Monday, November 07, 2016 10:17 AM
To: Arlyn Penaranda - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Samuel Dixon - NOAA Affiliate
Subject: Re: UPDATES on DOC-NOAA-2015-001376

(b)(5)
[Redacted]

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[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) [Redacted] (C)

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Good morning. I'm just getting back to this FOIA...aiming to get the FAL to Sam today...then close ASAP!

Anyway (b)(5) [Redacted].

Thanks!

Arlyn

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Wednesday, October 05, 2016 1:45 PM
To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate; Louise Milkman - NOAA Federal; James LeDuc - NOAA Federal; Velna Bullock - NOAA Federal; Danielle Rioux - NOAA Federal
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Please, any questions, comments or concerns, call or email me! I plan on working on this FOIA next week (finishing up other FOIAs this time).

Thanks everyone!

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To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate; Louise Milkman - NOAA Federal; James LeDuc - NOAA Federal; Velna Bullock - NOAA Federal; Danielle Rioux - NOAA Federal
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Affiliate; Steven Goodman - NOAA Federal; Lorna Martin-Gross - N... (lorna.martin-gross@noaa.gov)

Subject: RE: UPDATES on DOC-NOAA-2015-001376

Was not able to have the call with the requester today. He is in the west coast. He informed me yesterday that he will call in the morning his time but did not. I was not able to reach him and I sent him an email. I'm signing off at 3PM today and will try to reach him tomorrow.

R/

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From: Arlyn Penaranda - NOAA Federal [<mailto:arlyn.penaranda@noaa.gov>]

Sent: Tuesday, September 27, 2016 4:22 PM

To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate; Louise Milkman - NOAA Federal; James LeDuc - NOAA Federal; Velna Bullock - NOAA Federal; Danielle Rioux - NOAA Federal

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Good afternoon everyone.

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I will let you all know the outcome of the discussion. Have a good day.

R/

Arlyn

[\(301\) 427-8256](tel:(301)427-8256)

Arlyn.Penaranda@noaa.gov

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Attachments: DRAFTPart5 FAL.DOCX

WRONG ATTACHMENT AGAIN...It's this one...see highlighted in yellow

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Attachments: snowe letter enforcement 8 1 12.pdf; 5.15.12 Letter to Administrator Lubchenco Incoming.pdf; 04.02.12 Hastings Ltr to Lubchenco.pdf; FOIA 12-041 to Congressman Tierney 2-16-11 (1).pdf; RE: Informal Consultation re: DOC-NOAA-2015-001376; DRAFTPart5 FAL.docx

Mark,

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(b)(5) [Redacted]
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R/

Arlyn

[\(301\) 427-8256](tel:(301)427-8256)

Arlyn.Penaranda@noaa.gov

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Accessibility Report

Filename:
NOAA8850 Privacy Threshold Analysis.pdf

Report created by:
Organization:

[Enter personal and organization information through the Preferences > Identity dialog.]

Summary

The checker found problems which may prevent the document from being fully accessible.

- Needs manual check: 0
- Passed manually: 2
- Failed manually: 0
- Skipped: 2
- Passed: 27
- Failed: 1

Detailed Report

Document

Rule Name	Status	Description
Accessibility permission flag	Passed	Accessibility permission flag must be set
Image-only PDF	Passed	Document is not image-only PDF
Tagged PDF	Passed	Document is tagged PDF
Logical Reading Order	Passed manually	Document structure provides a logical reading order
Primary language	Passed	Text language is specified
Title	Passed	Document title is showing in title bar
Bookmarks	Passed	Bookmarks are present in large documents
Color contrast	Passed manually	Document has appropriate color contrast

Page Content

Rule Name	Status	Description
Tagged content	Passed	All page content is tagged
Tagged annotations	Skipped	All annotations are tagged
Tab order	Passed	Tab order is consistent with structure order
Character encoding	Passed	Reliable character encoding is provided
Tagged multimedia	Passed	All multimedia objects are tagged
Screen flicker	Passed	Page will not cause screen flicker
Scripts	Passed	No inaccessible scripts
Timed responses	Passed	Page does not require timed responses
Navigation links	Passed	Navigation links are not repetitive

Forms

Rule Name	Status	Description
Tagged form fields	Failed	All form fields are tagged
Field descriptions	Passed	All form fields have description

Alternate Text

Rule Name	Status	Description
Figures alternate text	Passed	Figures require alternate text
Nested alternate text	Passed	Alternate text that will never be read
Associated with content	Passed	Alternate text must be associated with some content
Hides annotation	Passed	Alternate text should not hide annotation
Other elements alternate text	Passed	Other elements that require alternate text

Tables

Rule Name	Status	Description
Rows	Passed	TR must be a child of Table, THead, TBody, or TFoot
TH and TD	Passed	TH and TD must be children of TR
Headers	Passed	Tables should have headers
Regularity	Passed	Tables must contain the same number of columns in each row and rows in each column

Summary	Passed	Tables must have a summary
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Lists

Rule Name	Status	Description
List items	Passed	LI must be a child of L
Lbl and LBody	Passed	Lbl and LBody must be children of LI

Headings

Rule Name	Status	Description
Appropriate nesting	Skipped	Appropriate nesting

[Back to Top](#)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, November 14, 2016 2:13 PM
To: Sarah Brabson - NOAA Federal
Cc: Robert Swisher - NOAA Federal
Subject: NOAA8850 PTA
Attachments: NOAA8850 - Privacy Threshold Analysis mhg.pdf

Hey Sarah--

I got this directly from Eduardo this morning. It reflects what we discussed with Jeremy several months ago (no PII collection). Here it is, signed and ready to go.

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

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Accessibility Report

Filename:
NOAA8850 Privacy Threshold Analysis.pdf

Report created by:
Organization:

[Enter personal and organization information through the Preferences > Identity dialog.]

Summary

The checker found problems which may prevent the document from being fully accessible.

- Needs manual check: 0
- Passed manually: 2
- Failed manually: 0
- Skipped: 2
- Passed: 27
- Failed: 1

Detailed Report

Document

Rule Name	Status	Description
Accessibility permission flag	Passed	Accessibility permission flag must be set
Image-only PDF	Passed	Document is not image-only PDF
Tagged PDF	Passed	Document is tagged PDF
Logical Reading Order	Passed manually	Document structure provides a logical reading order
Primary language	Passed	Text language is specified
Title	Passed	Document title is showing in title bar
Bookmarks	Passed	Bookmarks are present in large documents
Color contrast	Passed manually	Document has appropriate color contrast

Page Content

Rule Name	Status	Description
Tagged content	Passed	All page content is tagged
Tagged annotations	Skipped	All annotations are tagged
Tab order	Passed	Tab order is consistent with structure order
Character encoding	Passed	Reliable character encoding is provided
Tagged multimedia	Passed	All multimedia objects are tagged
Screen flicker	Passed	Page will not cause screen flicker
Scripts	Passed	No inaccessible scripts
Timed responses	Passed	Page does not require timed responses
Navigation links	Passed	Navigation links are not repetitive

Forms

Rule Name	Status	Description
Tagged form fields	Failed	All form fields are tagged
Field descriptions	Passed	All form fields have description

Alternate Text

Rule Name	Status	Description
Figures alternate text	Passed	Figures require alternate text
Nested alternate text	Passed	Alternate text that will never be read
Associated with content	Passed	Alternate text must be associated with some content
Hides annotation	Passed	Alternate text should not hide annotation
Other elements alternate text	Passed	Other elements that require alternate text

Tables

Rule Name	Status	Description
Rows	Passed	TR must be a child of Table, THead, TBody, or TFoot
TH and TD	Passed	TH and TD must be children of TR
Headers	Passed	Tables should have headers
Regularity	Passed	Tables must contain the same number of columns in each row and rows in each column

[Summary](#) Passed Tables must have a summary

Lists

Rule Name	Status	Description
List items	Passed	LI must be a child of L
Lbl and LBody	Passed	Lbl and LBody must be children of LI

Headings

Rule Name	Status	Description
Appropriate nesting	Skipped	Appropriate nesting

[Back to Top](#)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, November 15, 2016 6:28 PM
To: Beverly Hernandez - NOAA Affiliate
Cc: Denise Hamilton; Lola Stith - NOAA Affiliate
Subject: Re: DOC-NOAA-2016-001808
Attachments: Final Letter - DOC-NOAA-2016-001638 BLipton signed mhg.pdf

Hi Bev,

No problem--here is an example. (b)(5)

Thanks, Bev!

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

On Tue, Nov 15, 2016 at 6:09 PM, Beverly Hernandez - NOAA Affiliate <beverly.hernandez@noaa.gov> wrote:

Hi Mark,

(b)(5)

Please advise. (b)(5)

Thank you.

On Tue, Nov 15, 2016 at 5:56 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hey Bev,

(b)(5)

Thanks, Bev!

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

--

Beverly Hernandez <beverly.hernandez@noaa.gov>
Syneren Technologies Corporation
NOAA/National Weather Service
Office of the Chief Financial Officer
Management and Organization Division
Ph: [301-427-6936](tel:301-427-6936)

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From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Sent: Wednesday, November 16, 2016 4:04 PM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Arlyn Penaranda - NOAA Federal
Subject: URGENT ACTION REQUESTED: FAL for DOC-NOAA-2016-001765.
Attachments: DOC-NOAA- 2016-001765 draft FAL response letter for Graff.docx

Hi Mark,

(b)(5)

A copy of this document is in FOIAonline.

Thanks for your time.

Susie.

P.S. I would like to get this out NLT tomorrow, as the requester has asked about it.

--

Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
U.S. Department of Commerce
1315 East-West Highway
SSMC3, Room 15829
Silver Spring, MD 20910
(301) 427-8285 Office
(301) 427-2211 Fax

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, November 16, 2016 5:53 PM
To: Susan Beresford - NOAA Federal
Subject: Re: URGENT ACTION REQUESTED: FAL for DOC-NOAA-2016-001765.
Attachments: DOC-NOAA- 2016-001765 signed FAL response letter for Graff mhg.docx.pdf

Ha (b)(5)
If you can upload this into FOIAOnline.

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

On Wed, Nov 16, 2016 at 5:24 PM, Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov> wrote:
I was anxious to get this out, so I took the liberty and cut and pasted your letterhead logo onto your signed letter, attached.

----- Forwarded message -----

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Date: Wed, Nov 16, 2016 at 4:33 PM
Subject: Re: URGENT ACTION REQUESTED: FAL for DOC-NOAA-2016-001765.
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>

(b)(5)

?

On Wed, Nov 16, 2016 at 4:30 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hi Susie--

No problem. See the signed version attached. Let me know whenever this is ready for my final review in FOIAOnline.

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Wed, Nov 16, 2016 at 4:03 PM, Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov> wrote:
Hi Mark,

(b)(5)

A copy of this document is in FOIAonline.

Thanks for your time.

Susie.

P.S. I would like to get this out NLT tomorrow, as the requester has asked about it.

--

Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
U.S. Department of Commerce
1315 East-West Highway
SSMC3, Room 15829
Silver Spring, MD 20910
[\(301\) 427-8285](tel:3014278285) Office
[\(301\) 427-2211](tel:3014272211) Fax

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Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
U.S. Department of Commerce
1315 East-West Highway
SSMC3, Room 15829
Silver Spring, MD 20910
[\(301\) 427-8285](tel:3014278285) Office
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--

Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
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From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
Sent: Monday, November 21, 2016 8:42 AM
To: Lola Stith - NOAA Affiliate; Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Good morning Mark and Lola,

The 2016-001270 FOIA is sitting with your office for approval of the 2nd interim release (OIG docs).

Thank you,

Lorna

On Fri, Nov 18, 2016 at 4:29 PM, Scott Doyle <scottdoyle137@aol.com> wrote:

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Wednesday, November 02, 2016 1:51 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?.

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>

Sent: Tue, Oct 18, 2016 1:39 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager
Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Tuesday, October 18, 2016 1:15 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>
Sent: Tue, Oct 18, 2016 12:58 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the

body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.”

The appeal language from the interim release letter states:

“We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

*Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875*

14th and Constitution Avenue, N.W.

Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- *a copy of the original request,*
- *our response to your request,*
- *a statement explaining why the withheld records should be made available, and why the denial of the records was in error.*
- *“Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.*

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

*Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov*

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

4. "I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require."

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday - Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross
Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith

NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?
3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.
4. I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>
To: scottdoyle137 <scottdoyle137@aol.com>
Sent: Thu, Sep 1, 2016 9:08 am
Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvent Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff
NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: 301-427-8244

lorna.martin-gross@noaa.gov

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Sent: Friday, November 18, 2016 10:14 AM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Fwd: Close out in 2016-001765.
Attachments: DOC-NOAA- 2016-001765 signed FAL response letter for Graff mhg.docx.pdf

Hi Mark,

I am on leave today and I don't have upload access to this FOIA anymore because it is in "Review." Lola usually helps me, but I see that she is out until Monday.

(b)(5)

If you can't do it today, then it can wait until Monday. Thanks.

Susie.

----- Forwarded message -----

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Date: Wed, Nov 16, 2016 at 7:33 PM
Subject: Fwd: Close out in 2016-001765.
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Can you please upload this current version (with FOIAonline blurb on top) into FOIAonline -- and delete the other one? I don't have access now. Thanks.

----- Forwarded message -----

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Date: Wed, Nov 16, 2016 at 5:38 PM
Subject: Close out in 2016-001765.
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Lola,

(b)(5)

I will be out of pocket tomorrow AM, but can you take a look at this and possibly correct and send the documents and letter out for me? (It is a partial grant/partial denial.) I will try calling you at some point tomorrow.

Thanks.

Susie.

--

Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
U.S. Department of Commerce
1315 East-West Highway
SSMC3, Room 15829
Silver Spring, MD 20910
(301) 427-8285 Office
(301) 427-2211 Fax

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--

Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
U.S. Department of Commerce
1315 East-West Highway
SSMC3, Room 15829
Silver Spring, MD 20910
(301) 427-8285 Office
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(b) (5)

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(b) (5)

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Sent: Monday, November 21, 2016 10:09 AM
To: Lola Stith - NOAA Affiliate
Cc: Mark Graff - NOAA Federal
Subject: Fwd: Close out in 2016-001765.
Attachments: DOC-NOAA- 2016-001765 signed FAL response letter for Graff mhg.docx.pdf

Lola,

Can you call me at home today, 301-424-3070, or set up a Google appointment, to assist me in closing out this FOIA today? Thanks so much.

----- Forwarded message -----

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Date: Fri, Nov 18, 2016 at 10:14 AM
Subject: Fwd: Close out in 2016-001765.
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Hi Mark,

I am on leave today and I don't have upload access to this FOIA anymore because it is in "Review." Lola usually helps me, but I see that she is out until Monday.

(b)(5)

If you can't do it today, then it can wait until Monday. Thanks.

Susie.

----- Forwarded message -----

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Date: Wed, Nov 16, 2016 at 7:33 PM
Subject: Fwd: Close out in 2016-001765.
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

(b)(5)

I don't have access now. Thanks.

----- Forwarded message -----

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Date: Wed, Nov 16, 2016 at 5:38 PM
Subject: Close out in 2016-001765.

To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Lola,

(b)(5)

I will be out of pocket tomorrow AM, but can you take a look at this and possibly correct and send the documents and letter out for me? (It is a partial grant/partial denial.) I will try calling you at some point tomorrow.

Thanks.

Susie.

--

Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
U.S. Department of Commerce
1315 East-West Highway
SSMC3, Room 15829
Silver Spring, MD 20910
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U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Information Officer
High Performance Computing and Communications

Via FOIAonline

November 16, 2016

Elizabeth A. Mitchell
Association for Professional Observers
P.O. Box 933
Eugene, OR 97440

Re: FOIA Request DOC-NOAA-2016-001765

Dear Ms. Mitchell:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on September 29, 2016, in which you requested, regarding the Environmental Protection Agency's Administrative Law Judge's Initial Decision and Order for NOAA Enforcement Case PI1401544:

A copy of the hearing transcript; A copy of the Respondents' and the Agency's exhibits; and A copy of Respondents' and Agency's post-hearing briefs and related reply briefs.

We have located 711 pages of documents responsive to your request. After two failed e-mail attempts, 207 of these pages were released to you in their entirety, on November 15, 2016.

An additional 230 pages are being released to you in their entirety, in this final response.

Two videos (Agency Exhibit 7), are available for viewing on YouTube at:

<https://www.youtube.com/watch?v=YfGp1Kdf-ds>

and

<https://www.youtube.com/watch?v=bkM09bzU-08>

We are also releasing 241 pages of documents responsive to your request that are partially redacted under exemptions 5 U.S.C. 552(b)(3); 5 U.S.C. 552(b)(4); 5 U.S.C. 552(b)(5); 5 U.S.C. 552(b)(6); and 5 U.S.C. 552(b)(7)(C), which prohibits from disclosure of records: information that is prohibited from disclosure by another federal statute; trade secrets or commercial or financial information that is confidential or privileged; privileged communications within or

between agencies, including attorney-client privilege; information that, if disclosed, would invade another individual's personal privacy; and information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy, respectively.

33 pages of documents responsive to your request are exempt under 5 U.S.C. 552(b)(3); 5 U.S.C. 552(b)(4); 5 U.S.C. 552(b)(6); and 5 U.S.C. 552(b)(7)(C), which prohibits from disclosure of records: information that is prohibited from disclosure by another federal statute; trade secrets or commercial or financial information that is confidential or privileged; information that, if disclosed, would invade another individual's personal privacy; and information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy, respectively. These pages are being withheld in their entirety.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov

Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Susan S. Beresford at Susan.S.Beresford@noaa.gov, or by phone at (301) 427-8285, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,

GRAFF.MARK.HYRU
M.1514447892

Digitally signed by
GRAFF.MARK.HYRUM.1514447892
DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn GRAFF.MARK.HYRUM.1514447892
Date: 2016.11.16 17:49:22 -05'00'

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, November 21, 2016 10:26 AM
To: Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate; Kimberly Katzenbarger - NOAA FEDERAL; John Almeida - NOAA Federal; Arlyn Penaranda - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Final NOAA Draft Comments to DOC Regulation Changes
Attachments: DraftNOAACComments-FOIARegs2016-11-14-draftclean.docx

Hey Guys--

Here is my final draft for the NOAA Comments on the regs. I've taken each of the comments we already had, and included draft language as appropriate as a suggested change. We'll see how this is received, and hopefully these can be implemented at the Department Level. If no one has any objections, I'll be sending this out later today--

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, November 29, 2016 12:22 PM
To: Steven Goodman - NOAA Federal
Subject: Re: Bradley White
Attachments: resume.doc

Hi Steve,

(b)(5)
[Redacted]
[Redacted]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

On Tue, Nov 29, 2016 at 11:52 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hi Steve,

I have not. (b)(5)
[Redacted]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Tue, Nov 29, 2016 at 11:33 AM, Steven Goodman - NOAA Federal <steven.goodman@noaa.gov> wrote:
Hi Mark,

(b)(5)
[Redacted]

Thanks,

Steve

Sent from my iPhone

On Nov 14, 2016, at 9:46 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Steve--

Yes (b)(5) [redacted]
[redacted]
[redacted]

- [redacted]
[redacted]
[redacted]
[redacted]
- [redacted]
[redacted]
[redacted]
[redacted]
[redacted]

[redacted]. Let me know if you need any other suggested options--

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) [redacted] (C)

On Thu, Nov 10, 2016 at 12:26 PM, Steven Goodman - NOAA Federal <steven.goodman@noaa.gov> wrote:

Hi Mark,

(b)(5) [redacted]?

Steve

On Mon, Oct 24, 2016 at 3:43 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Steve--

(b)(5) [redacted]
[redacted] --

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) [redacted] (C)

On Mon, Oct 24, 2016 at 3:25 PM, Steven Goodman - NOAA Federal <steven.goodman@noaa.gov> wrote:

Mark,

(b)(5)

Thanks,

Steve

--

Steven Goodman

NOAA Fisheries

Chief
National Appeals Office, Office of Management and Budget
1315 East-West Hwy.
SSMC 3 Route F/MB7 Room 10841
Silver Spring, MD 20910

Tel: [301-427-8732](tel:301-427-8732)
Cell: (b)(6)
Fax: [301-713-2384](tel:301-713-2384)

--

Steven Goodman

NOAA Fisheries

Chief
National Appeals Office, Office of Management and Budget
1315 East-West Hwy.
SSMC 3 Route F/MB7 Room 9515
Silver Spring, MD 20910

Tel: [301-427-8732](tel:301-427-8732)
Cell: (b)(6)
Fax: [301-713-2384](tel:301-713-2384)

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, November 30, 2016 1:05 PM
To: Eric Williams - NOAA Affiliate; Stefan Leeb - NOAA Federal; Robert Hembrook - NOAA Federal; Robert Swisher - NOAA Federal; Jerry McNamara; David Bedell - NOAA Federal; Sarah Brabson - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: DLP Docs for the discussion today
Attachments: DLP-Memo(Signed-EHerbst and CPurvis (4-15-16).pdf; DLP Plan Final signed.pdf; DLPBroadcastMessage-Final.pdf; NOAA DLP Plan Final signed.pdf; Sample Email Message Temporarily Quarantined.pdf; Census - Non-Disclosure Agreement - FINAL.docx; Census Data Loss Prevention FAQs.pdf

Hey Everyone--

Attached are the docs that we are going over today.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

**CENSUS BUREAU
NON-DISCLOSURE AGREEMENT**

I, _____, an individual official, employee, consultant, or subcontractor of or to _____ (the Authorized Entity), intending to be legally bound, hereby consent to the terms in this Agreement in consideration of my being granted conditional access to certain information, specified below, that is owned by, produced by, or in the possession of the Census Bureau.

As used in this Agreement, sensitive but unclassified information is an over-arching term that covers any information, which the loss of, misuse of, or unauthorized access to or modification of could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under Section 552a of Title 5, as amended, but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

I attest that I am familiar with, and I will comply with the standards for access, dissemination, handling, and safeguarding of the information to which I am granted access through the Census Bureau's Data Loss Prevention (DLP) scan and its related components as cited in this Agreement and in accordance with the guidance provided to me relative to the specific category of information.

I understand and agree to the following terms and conditions of my access to the information indicated above:

1. I hereby acknowledge that I have received privacy and data security training concerning the nature and protection of information to which I have been provided conditional access, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.
2. By being granted conditional access to the information indicated above, the Census Bureau has placed special confidence and trust in me and I am obligated to protect this information from unauthorized disclosure, in accordance with the terms of this Agreement and the laws, regulations, and directives applicable to the specific categories of information to which I am granted access.
3. I attest that I understand my responsibilities and that I am familiar with and will comply with the standards for protecting such information that I may have access to in accordance with the terms of this Agreement and the laws, regulations, and/or directives applicable to the specific categories of information to which I am granted access. I understand that the Census Bureau may conduct inspections, at any time or place, for the purpose of ensuring compliance with the conditions for access, dissemination, handling and safeguarding information under this Agreement.

4. I will not disclose or release any information provided to me pursuant to this Agreement without proper authority or authorization. Should situations arise that warrant the disclosure or release of such information I will do so only under approved circumstances and in accordance with the laws, regulations, or directives applicable to the specific categories of information. I will honor and comply with any and all dissemination restrictions cited or verbally relayed to me by the proper authority.
5. I hereby agree that material which I have in my possession and containing information covered by this Agreement, will be handled and safeguarded in a manner that affords sufficient protection to prevent the unauthorized disclosure of or inadvertent access to such information, consistent with the laws, regulations, or directives applicable to the specific categories of information. I agree that I shall return all information to which I have had access or which is in my possession 1) upon demand by an authorized individual; and/or 2) upon the conclusion of my duties, association, or support to the Census Bureau; and/or 3) upon the determination that my official duties do not require further access to such information.
6. I hereby agree that I will not alter or remove markings, which indicate a category of information or require specific handling instructions, from any material I may come in contact with, unless such alteration or removal is consistent with the requirements set forth in the laws, regulations, or directives applicable to the specific category of information. I agree that if I use information from a sensitive document or other medium, I will carry forward any markings or other required restrictions to derivative products, and will protect them in the same matter as the original.
7. I hereby agree that I shall promptly report to the appropriate official, in accordance with the guidance issued for the applicable category of information, any loss, theft, misuse, misplacement, unauthorized disclosure, or other security violation, I have knowledge of and whether or not I am personally involved. I also understand that my anonymity will be kept to the extent possible when reporting security violations.
8. If I violate the terms and conditions of this Agreement, such violation may result in the cancellation of my conditional access to the information covered by this Agreement. This may serve as a basis for denying me conditional access to other types of information, and may affect the performance of my duties.
9. I hereby assign to the Census Bureau all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation of the information not consistent with the terms of this Agreement.
10. This Agreement is made and intended for the benefit of the Census Bureau and may be enforced by the Census Bureau or the Authorized Entity. I understand that if I violate the terms and conditions of this Agreement, I could be subjected to administrative, disciplinary, civil, or criminal action, as appropriate, under the laws, regulations, or directives applicable to the category of information involved and neither the Census

Bureau nor the Authorized Entity have waived any statutory or common law evidentiary privileges or protections that they may assert in any administrative or court proceeding to protect any sensitive information to which I have been given conditional access under the terms of this Agreement.

11. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions shall remain in full force and effect.
12. My execution of this Agreement shall not nullify or affect in any manner any other secrecy or non-disclosure Agreement which I have executed or may execute with the Census Bureau.
13. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958, as amended; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 USC 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including Sections 641, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 USC 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive Order and listed statutes are incorporated into this agreement and are controlling.
14. I represent and warrant that I have the authority to enter into this Agreement.
15. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me any laws, regulations, or directives referenced in this document so that I may read them at this time, if I so choose.

EMPLOYEE		
Print Name	Signature	Date
WITNESS		
Witness Name	Signature	Date

Census Data Loss Prevention (DLP) Email Scan FAQs:

Q. What is the Census Bureau's Data Loss Prevention Email Scan?

A. The Census Bureau's Data Loss Prevention Email Scan, or DLP, is an off the shelf software designed to scan all outgoing unencrypted email messages for certain sensitive key words. Data loss prevention email scan is content-level scanning of unencrypted email messages and attachments to detect inappropriate transport of sensitive information. Examples of sensitive information include health information, Social Security Numbers, Tax Identification Numbers, and credit card information. Such information is prohibited by Federal policy from unencrypted email transmission.

Implementation of the DLP is required by the Department of Commerce, and by related regulations, the Office of Management and Budget.

Q. How does the DLP for email work?

A. When a message is sent from the Census Bureau to any location outside of Census email servers, the DLP system will immediately scan the message and any attachments for specific sensitive information. If sensitive information is detected in an unencrypted email (include attachments), the email message, and any attachments will immediately be placed in quarantine. A separate email is automatically sent to the sender stating this action and with additional instructions to encrypted the email or redacts all sensitive information that is prohibited from electronic transmission in an unencrypted email.

Q. Can the DLP for email detect Title 13 & 26 data?

A. Not at this time, understanding the data format needs to occur so that custom policies can be developed for the email DLP system.

Q. What does the DLP quarantined notice look like?

A. A copy of the DLP quarantined notice can be found by clicking this link.

Q. Can the DLP scan email messages from personal email accounts such as Gmail, Hotmail, Yahoo, etc.

A. No. At the current time only messages sent from an official Census Bureau account that are being transmitted outside of Census email servers are being scanned. However, to better protect yourself from unauthorized disclosure, it is best to not send unencrypted sensitive PII through any email account.

Q. Are all incoming and outgoing email messages scanned by the DLP?

No. At the present time, only non-encrypted email messages leaving the Census firewall are scanned by the DLP for privacy and data protection considerations. In-coming messages are currently not scanned by the DLP.

Q. Why is DLP for email important?

A. With more and more sensitive information being transported electronically, there is greater potential for inadvertent (or malicious) disclosure of sensitive information by users. By implementing DLP for email, we can proactively prevent inadvertent/malicious disclosure of sensitive information while encouraging the use of Census Bureau approved encryption software.

Q. What to do if an email message was quarantined by the DLP in error?

If, after thoroughly reviewing the email it is determined that the email message was quarantined in error (otherwise known as a false positive), that is, no sensitive information is found in the email message, the sender should contact a Privacy Analyst with the Policy Coordination Office on ext. 3-6440. After confirming that the quarantined email was a false positive, the Privacy Analyst will release the email message to the intended recipient(s).

Q. What happens to an email that is quarantined by the DLP?

If the email message is not authorized to be released by a Privacy Analyst within 15 days of being quarantined, it will be automatically deleted by the DLP.

Q. How soon are individuals notified that their email message has been quarantined?

Quarantined messages from the DLP are automatically sent to the sender within 5 minutes of the attempted transmission of the email message.

Q. Are incoming messages scanned by DLP for email?

A. No, not at the present time. Only outbound messages are scanned by the DLP system. Messages between internal users (within the Census firewall) are not be scanned.

Q. How many email messages are sent/receive daily and of those how many potential incidents?

A. The Census Bureau process approximately 2 million messages daily and less than 1% of those messages potentially contain sensitive information.

Q. Are email messages that are quarantined by the DLP considered a breach?

No, but it is a violation of DOC policy. Email messages that were quarantined by the DLP were prevented from leaving the Census firewall, thus, preventing a breach from occurring. However, attempting to send an unencrypted email message containing sensitive information is a violation of the [U.S. Department of Commerce Office of the Chief Information Officer Electronic Transmission of Personally Identifiable Information](#).

The Bottom Line –

The DLP is for your protection. It allows the agency to proactively detect and contain potential data breaches.

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800-53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800-53A to develop their own assessment procedures.

- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

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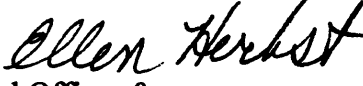
Zachary Goldstein, NOAA CIO



APR 15 2016

MEMORANDUM FOR: Heads of Operating Units and Secretarial Officers

FROM: Catrina D. Purvis 
Senior Agency Official for Privacy (SAOP) &
Chief Privacy Officer

Ellen Herbst 
Chief Financial Officer &
Assistant Secretary for Administration

SUBJECT: Departmental Privacy Standards for Commerce Data Loss
Prevention (DLP) Security Tools

The purpose of this memorandum is to establish a requirement for all bureaus/operating units (BOUs) to configure their Data Loss Prevention (DLP) security tools to implement privacy control capabilities that meet Departmental privacy DLP standards. This requirement will enhance privacy protections and reduce personally identifiable information (PII) breaches within Commerce.

BACKGROUND

DLP is a term that refers to both the policy and information security tools used to identify, restrict, monitor, and protect sensitive data in use, in motion, and at rest. DLP security tools detect and prevent unauthorized attempts to copy or send sensitive data, intentionally or unintentionally, without authorization. On July 7, 2010, Departmental guidance announcing the implementation of a DLP program was issued in a document titled "Immediate Enablement of a DLP Security Tool."

On December 17, 2014, the Commerce Privacy Council's DLP Working Group (commissioned by the then-General Counsel) produced a *Privacy DLP Working Group Recommendations Report*. In furtherance of the 2010 guidance, the report recommended requiring all BOUs to implement DLP-based privacy control capabilities and provided minimum privacy DLP standards for electronic transmissions of sensitive PII (incoming and outgoing email messages or internet postings). Implementation of these standards results in all unsecured electronic transmission of sensitive PII attempts on any Commerce system to be blocked and redirects senders to use an approved secured

transmission method. Many BOUs have implemented the recommended privacy DLP standards across all of their systems and others have made significant progress toward that end. This memorandum formally requires all BOUs to implement privacy DLP capabilities that satisfy the existing minimum standards set forth in the working group's attached report.

REQUIRED ACTIONS

Accordingly, the following actions are required and must be submitted to the Commerce Senior Agency Official for Privacy at CPO@doc.gov within 120 days from the date of this memorandum:

- BOUs with existing DLP security tool capabilities – Provide a confirmation email that the minimum privacy DLP control standards identified in the DLP Working Group Report have been implemented.
- BOUs with no existing DLP security tool capabilities – Provide an implementation plan to meet the minimum Privacy DLP Standards within one (1) year. (The implementation plan may propose an alternative method/process to achieve the standards).

Please direct any questions regarding this memorandum to Lisa Martin, Deputy Director of Departmental Privacy Operations, who can be reached at (202) 482-2459 and lmartin1@doc.gov.

cc: BOU Chief Privacy Officers
Chief Information Officers
Chief Financial Officers

Attachment:

DOC Privacy DLP Working Group Recommendations

United States Department of Commerce

Privacy Data Loss Prevention (DLP)
Working Group
Recommendations
December 17, 2014



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**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

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**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

SUMMARY

This document contains recommendations from the Department of Commerce (DOC) inter-agency network based Privacy Data Loss Prevention (DLP) Working Group for implementing a DOC wide DLP privacy program. Information in this recommendation will change as we gain greater experience using DLP email scan, new technologies are introduced, and new OMB requirements are implemented. As a result, it is the recommendation of the Privacy DOC Privacy DLP Working Group that these recommendations be reviewed annually and updated as appropriate.

The DOC inter-agency Privacy DLP Working Group was commissioned to research, investigate, and propose recommendations for implementing a department wide DLP privacy program. The group's primary objective was to provide high-level recommendations for a department wide DLP privacy program that will minimize the number of sensitive personally identifiable information (PII) email incidents while considering the level of technical, human, and financial resources needed to implement a DLP privacy program. DLP accomplishes these tasks using automated tools that implement policies and processes to identify where sensitive information is stored throughout the department's network, restrict access to that sensitive information, and monitor transmission of sensitive data in and out of the network boundary.

The Privacy DLP working group consisted of a small group of privacy advocates from the Department of Commerce, the Bureau of Industry and Security (BIS), the Bureau of Economic Analysis (BEA), the U.S. Census Bureau, the National Oceanic and Atmospheric Administration (NOAA), the National Institute of Standards and Technology (NIST), and the U.S. Patent and Trademark Office (USPTO). Byron Crenshaw, Privacy Compliance Chief of the U.S. Census Bureau, chaired this group.

This document describes the following recommendations from the Privacy DLP Working Group:

1. Security/Sensitivity Classification of DLP Personnel
2. Department-wide Privacy DLP Standard Process
3. DLP Minimum Scanning (filtering) Configuration – Incoming & Outgoing Mail
4. Filtering Criteria
5. Internet Postings
6. Handling of False Positives
7. Email Message Alerts to the Email Sender
8. Implementation Plan & Deadline
9. Reporting Requirements

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

SCOPE

The recommendations of this document are for all unencrypted HTTP entities and messaging traffic (incoming or outgoing email messages or internet postings) that are leaving or entering a DOC network.

RECOMMENDATIONS

1. Security/Sensitivity Classification of DLP Personnel

Standard DLP operating procedures may allow DLP personnel access to confidential and/or sensitive information pertaining to persons, government or private entities. The DOC Privacy DLP Working Group recommends that DLP personnel sign a non-disclosure form prior to working with DLP technologies, acknowledging the requirements and responsibilities for information that is handled and made available. In addition, agencies may consider conducting additional security/suitability clearances for personnel involved with DLP.

2. Department-Wide DLP Standards

It is the recommendation of the DOC Privacy DLP Working Group that the DOC adopt the following practice as standard DLP privacy operating procedures:

- all unencrypted electronic messages (email messages or internet postings) that are leaving or entering a DOC network be filtered through the DLP solution (minimum scanning configuration is described in Section 3);
- suspected sensitive PII detected by the DLP shall be quarantined for a specified number of days as determined by the department or the OU;
- for each day an email is stored in quarantined, the email sender shall be sent an auto-generated email message from the DLP stating that his/her email will be deleted on [specified date] unless action is taken;
- if no action is taken on email messages quarantined by the DLP within the pre-determined number of days, the email message shall be deleted and the sender shall be notified;
- to resolve a suspected false positive, the email sender can either:
 - retransmit the email message with proper encryption,
 - redact the message of all sensitive information and retransmit, or,
 - contact the privacy staff to resolve suspected false positive (described in Section 6 – Handling of False Positives).

3. DLP Minimum Scanning Configuration

A successful department wide DLP privacy program must begin with a standard set of personally identifiable information (PII) items that each operating unit must consistently treat with special handling procedures during electronic transmission. The identification of sensitive PII is often based on the context of how the information is used. Since there are limitations on contextual understanding by DLP software, the list of sensitive PII identified by the DOC inter-agency Privacy DLP Working Group will consist primarily of single (standalone) sensitive PII items, with some basic grouping or combination of other PII or commonly associated text. Examples of these items are listed in Table 1.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

A. Egress Scanning

It is the recommendation of the DOC Privacy DLP Working Group that all outgoing email messages sent from a DOC network be subject to DLP filtering for sensitive PII based on the minimum filtering criteria as outlined in this document.

Note on Agencies' Rights: DOC operating units must reserve the right to add additional PII to their DLP filter as necessary. However, minimum DLP items identified by the DOC DLP Team cannot be detracted.

B. Ingress Scanning

Historical research by DOC operating units that are currently using a DLP software has revealed that incoming email messages will sometime contain sensitive PII which can go undetected by the operating unit. It is not until the operating unit attempts to reply or forward the message outside of the DOC network that the sensitive PII in the e-mail message is detected. It was also revealed that sometimes the incoming e-mail message will be copied and filed in an unsecure environment because the sensitive PII within the e-mail message remained undetected.

To address this problem, it is the recommendation of the DOC Privacy DLP Working Group that all e-mail messages coming into DOC networks be subject to the same DLP filtering criteria as outgoing email messages. Incoming e-mail messages containing sensitive PII as identified by the DLP filtering scan shall be blocked by the DLP from entering the DOC network. It is recommended that electronic notification be sent to the sender describing the policy prohibition, with instructions for using DOC approved encryption software (i.e., Accellion). In addition, it is also recommended that the intended recipient of the blocked email message be electronically notified that an incoming e-mail message has been blocked from receipt into the DOC network because of a possible DLP policy prohibition. Recommended suggestions for the wording of these notification messages are included in Appendix A.

4. Filtering Standard

The DOC Privacy DLP Working Group has identified a minimum standard for DLP privacy implementation. This filtering standard includes sensitive PII, and non-sensitive PII combined with other information, such as financial and/or medical information, which when combined, becomes sensitive PII.

DOC operating units must include these items in the standard filters of their DLP filtering items, additional filtering items can be added by DOC operating units as necessary.

If a quarantined message matches for more than one DLP filter item, the DLP scanning rules should terminate examination and trigger countermeasures on the first matching item.

It is the recommendation of the DOC Privacy DLP Working Group that the DLP filtering hierarchy be in this order.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

1. Social security number
2. Passport number
3. Driver's license/state identification number
4. Bank account/credit card number
5. Medical/HIPAA Information
6. Date of birth
7. Mother's maiden name

This order means if there is an email message that has content that recognize the SNN and HIPPA Patient Identification Number, the DLP would recognize the SSN as the violation and not continue processing for the HIPAA Patient Identifier.

4.1 U.S. Social Security Number Filters

The U.S. Social Security Number classifier requires a properly formatted number as well as other supporting data, such as a date of birth, name, or the text string "SSN".

U.S. SSN Examples:

- 123-45-6789 (No match because of no supporting information)
- 123-45-6789 July 4 (Match because a partial date is linked to 9-digit string number)
- 123-45-6789 7/4/1980 (Match because a possible date is linked to 9-digit string number)
- 123-45-6789 7/4 (No match)
- 123-45-6789 987-65-4321 (Match because of more than one 9-digit string number increases risk, threat, and harm)
- SSN: 123-45-6789 (Match)
- Joe Smith 123-45-6789 (Match because name linked to 9-digit number)
- 123-45-6789 CA 94066 (Match because state and zip code associated with 9-digit number)

4.2 Passport Number

The Passport Number filter requires inspection for the word "Passport," in English and Spanish, followed by a string of digits.

4.3 Driver's License/State Identification Number

Driver's license or other state identification number must be filtered by the words "Driver's License" or "State Identification," followed by a string of numeric or alphanumeric values.

String of numeric data including punctuation (dashes, periods, etc.).

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

4.4 Financial Account/Credit Card Number

The words "routing," "accounting," "credit card," or "cc," followed by a string of numbers with or without dashes.

4.5 Medical and Health Insurance Portability and Accountability (HIPAA) Filters

It is the recommendation of the DOC Privacy DLP Working Group that medical and other HIPAA considerations be included in the DLP data dictionary. The Medical/HIPAA DLP scan shall require a match on the medical classifier AND a match on a personal information identifier such as full name, U.S. Social Security Number, U.S. National Provider Identifier, or custom patient identification number, to be considered a Medical/HIPAA DLP violation.

Medical Information Examples:

personal identifier such as, full name, SSN, national provider identifier, or custom patient identification number -

- ADHD
- AIDS
- Arthritis
- Asthma
- Autism
- Cancer
- Chlamydia
- Diabetes
- Epilepsy
- Flu (Influenza)
- Herpes
- Giardiasis
- Gonorrhea
- Heart Disease
- Hepatitis
- HIV
- HPV (Human papillomavirus)
- Influenza
- Meningitis
- MRSA (Methicillin Resistant Staphylococcus aureus)
- Obesity
- Salmonella
- Scabies

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- Sexually Transmitted Diseases
- Stroke
- Trichomonas
- Trichomoniasis
- Tuberculosis (TB)

4.6 Date of Birth

Date of birth filter must include a combination of numeric or alphanumeric dates associated with the words “date of birth”, “DOB”, or “birth date,” and must be linked with a unique personal identifiable such as name or social security number.

5. Internet Postings

Sensitive PII posted for consumption via private or public websites can present a much greater risk of harm than sensitive PII transmitted through email because of the potential for a wider audience and exposure. It is the recommendation of this group that Internet traffic be scanned for DLP filtering items. This includes posts from DOC controlled networks going out to official DOC social media websites and pages, and posts inbound to DOC controlled and monitored websites and pages, i.e., Web forums. Attempted postings containing information prohibited by DLP filter criteria shall be blocked from release on the DOC controlled websites and pages, to the Internet.

6. Handling of False Positives

For the purpose of this recommendation, a “false positive” is defined as an electronic message that was falsely quarantined by the DLP solution.

If a sender suspects that his/her email message has been falsely quarantined by the DLP, it is the recommendation of the DOC Privacy DLP Working Group that the following actions be taken:

- the sender shall notify the privacy staff of the suspected false positive;
- a privacy professional will review the email to determine if the quarantined email message is a DLP false positive;
- upon confirmation by privacy professional that the email message was falsely quarantined by the DLP, the email message will be released by the privacy professional to the addressee(s);
- the sender shall be notified that the message has been reviewed by a privacy staff member and released to the intended recipient(s).

If the privacy professional determines that the email message is not a false positive, i.e., contains PII that is prohibited from unencrypted electronic transmission, it is the recommendation of this group that the following actions be taken:

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- the email message will be manually deleted by the privacy staff;
- the sender will be notified that the message has been reviewed by a privacy staff member and found to contain information that is prohibited by policy from unencrypted email transmission.

If no action is taken by the sender for a message that has been quarantined by the DLP after a specified number of days (as defined by either the department or the OU), it is the recommendation of this group that the following actions be taken:

- the email message be automatically deleted by the DLP solution;
- the sender shall receive an auto-generated email message from the DLP solution stating that the email message [email subject and date] has been deleted by the DLP.

7. Email Messages

It is the recommendation of the DOC Privacy DLP Working Group that when an email message is quarantined by the DLP email scan, the sender shall receive an auto-generated email message describing the possible violation, the quarantine of the email message, and the steps to take to release the email message to the intended recipients. If the employee suspects the DLP quarantined the email in error (false positive) and contacts the privacy office for assistance, another email message will be sent stating the results of the privacy review. An example of each of these letters is included under the Email Messages section of the Appendix A.

8. Implementation Plan & Deadline

It is the recommendation of the DOC Privacy DLP Working Group that a department-wide policy be written based on these recommendations. All DOC operating units shall be given one year from date of issue to comply with the policy.

9. Reporting Requirements

Incidents captured by the DLP are not released from a DOC controlled environment. Since they remain within the control of the DOC, the DOC Privacy DLP Working Group recommends that DLP incidents be considered an attempted violation of policy and not an actual breach. Therefore, DLP incidents shall not be required for CIRT reporting.

To monitor the effectiveness of the DLP program, it is the recommendation of the DOC Privacy DLP Working Group that all operating units maintain record of the number of incidents captured by the DLP, the number of false positives, the number of avoid breaches, and the number of attempted self disclosed sensitive information.

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**Table 1
Examples of Specific Sensitive Items**

Name		X
Address		X
Telephone (cell/land)		X
Date of Birth		X
Mother's maiden name		X
Social Security Number	X	
Bio-metric (fingerprint, palm print, hand geometry, iris recognition, retina, etc.)		X
Medical information, except brief references to absences from work		X
Passport Number		X
Bank Account/Credit Card Number or Account	X	
Driver's license/state identification number		X
Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and results of background investigations		X
Criminal history		X
Any information that may stigmatize or adversely affect an individual		X

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers, including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual.

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Table 2

DLP Solutions by DOC Operating Unit

	None	RSA	Iron Port	ScanMail	Secure Zip (Google cloud solution)	Trend Micro	Websense	Axways
BEA						X		
Census			X					
NIST	X							
PTO				X				X¹

¹ Used for email messages coming and going to the internet.

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Appendix A

Related Laws, Regulations, Policies, and Documents

- Privacy Act of 1974
- U.S. Department of Commerce Office of the Chief Information Officer, Electronic Transmission of Personally Identifiable Information
- U.S. Department of Commerce Office of the Chief Information Officer, IT Privacy Policy
- Office of Management and Budget Memorandum M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information
- Office of Management and Budget Memorandum M-06-19, Reporting Incidents Involving PII
- Office of Management and Budget Memorandum M-06-16, Protection of Sensitive Agency Information
- Office of Management and Budget Memorandum M-06-15, Safeguarding PII
- Commerce CIO's Memorandum on Safeguarding PII

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Appendix B

Email Messages

Employees can potentially receive two of the three DLP email messages:

1. **Message #1 - alerts the user that his/her message, and if appropriate any attachments, have been quarantined by the DLP. This message is to be sent each day until the quarantined email is either released by the privacy office or deleted.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

A scan by the [insert name of agency] Data Loss Prevention (DLP) system has detected that your email with the subject: [subject], dated [date email was sent] may contain sensitive information that by policy is prohibited from email transmission without proper encryption. As a result, your email has been placed in quarantine for [specified] days. Please take one of the following actions to resolve this issue:

1. *Re-transmit your message using approved email encryption; or,*
2. *Contact the privacy staff on (777) 777-7777, if you think your email was quarantined by the DLP email scan in error.*

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

2. **Message #2 – is sent to the email sender who requested review by a privacy professional because a false positive is suspected, and after review, the message is released to the intended recipients.**

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EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

YOUR EMAIL MESSAGE HAS BEEN SENT

The below email has been reviewed by the [name of agency's privacy office] and released to the intended receiver(s) on [date original message released].

If you have any questions please contact the [insert privacy office's name and telephone number].

- 3. Message #3 - alerts the user that his/her email message, and any attachments, has been deleted and not sent. This message is to be sent after a quarantined message has not been acted upon after the pre-determined period of time.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

The detention period of your quarantined email message has expired and your message has been deleted. Your message was not sent to the intended recipient.

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

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Appendix C

DEFINITIONS

Business Identifiable Information (BI): consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets, and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. “Commercial” is not confined to records that reveal “basic commercial operations” but includes any records [or information] in which the submitter has a “commercial interest” and can include information submitted by a nonprofit entity. Or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C. 9).

False Positive: messages quarantined by the DLP that were later determined to not have contained any information that is prohibited from electronic transmission.

Personally Identifiable Information (PII): OMB Memorandum M-07-16 states that PII “refers to information which can be used to distinguish or trace an individual’s identity, such as name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

Sensitive But Unclassified (SBU): is a designation of information in the United States federal government that, though unclassified, often requires strict controls over its distribution. SBU is a broad category of information that includes material covered by such designations as For Official Use Only (FOUO), Law Enforcement Sensitive (LES), Sensitive Homeland Security Information, Security Sensitive Information (SSI), Critical Infrastructure Information (CII), etc. It also includes Internal Revenue Service materials like individual tax records, systems information, and enforcement procedures. Some categories of SBU information have authority in statute or regulation (e.g. SSI, CII) while others, including FOUO, do not.

Sensitive Personally Identifiable Information (SPII): Department of Commerce’s policy on Electronic Transmission of PII states that “sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother’s maiden name, but each of these elements would not be sensitive independent of one another.”

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Sensitive Security Information (SSI): is a category of sensitive but unclassified information under the United States government's information sharing and control rules, often used by TSA and CBP. SSI is information obtained in the conduct of security activities whose public disclosure would, in the judgment of specified government agencies, harm transportation security, be an unwarranted invasion of privacy, or reveal trade secrets or privileged or confidential information.

UNCLASSIFIED/FOUO: is used for documents or products that contain material that is exempt from release under the Freedom of Information Act. It is treated as confidential, which means it cannot be discarded in the open trash, made available to the general public, or posted on an uncontrolled website. It can, however, be shared with individuals with a need to know the content, while still under the control of the individual possessing the document or product.

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UNRESOLVED ISSUES

Issue 1: Identify BII DLP requirements.

Resolution: Pending

Issue 2: How to resolve false positives of incoming email messages?

Resolution: Pending

RESOLVED ISSUES

Issue 1: Definition of a DLP breach:

Resolution: The official OMB definition of a breach is *“The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.”*

The lost of PII email incidents captured by the DLP shall not be considered breaches since the email containing the PII has never left our control.

Issue 2: Treatment of truncated IDs (SSNs, Passports numbers, credit card numbers, etc.)

Resolution: Page 2 of the Department of Commerce Policy on the Electronic Transmission of Personally Identifiable Information states the following:

“Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed.”

The treatment of truncated SSNs will be handled in accordance with the official DOC policy until such time when this requirement is rescinded by the department.

Other truncated numbers, i.e., passport numbers, credit card numbers, shall not be considered sensitive unless it is accompanied by other identifying information. (this adds to the DOC policy, since the policy does not address the use of truncated numbers other than SSN.

Issue 3: How to handle DLP incidents flagged after hours.

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Resolution: The automated email alert will immediately notify the sender that his/her email message has been quarantined. The message shall provide instructions for the sender to re-transmit the email using approved encryption software or through Accellion to successfully transmit the email. Secure FTP.

Issue 4: Treatment of incoming messages containing sensitive PII.

Resolution: The Privacy DLP Working Group recommends incoming messages be subject to DLP filtering, however, the decision to flag and quarantine incoming email messages containing sensitive PII shall be at the discretion of each operating unit.

Issue 5: Treatment of messages posted on agency's social media site

Resolution: traffic to the internet should be considered.

Issue 6: Shall we consider one DLP solution for all DOC OUs?

Resolution: No. Each operating unit must be able to employ a DLP solution that is compatible with existing technical capabilities and policies.

March 13, 2013

TO: All Census Bureau Employees

FROM: Nancy Potok, Deputy Director

Subject: Data Loss Prevention Email Scan

Privacy and confidentiality are cornerstones of our mission at the Census Bureau, and we're taking another step to protect sensitive and Personally Identifiable Information (PII).

Beginning Thursday, March 14, 2013, all outgoing messages from the Census Bureau's email systems (Lotus iNotes, SMTP gateway, etc.) will be automatically scanned prior to electronic transmission to ensure sensitive information is properly encrypted.

The automated scan will search email messages and unencrypted attachments for specific sensitive personally identifiable information, such as Social Security Numbers, sensitive financial information, credit card numbers, and medical information that is protected by the Health Insurance Portability and Accountability Act (HIPAA).

Messages flagged as containing a possible privacy or data security breach will be quarantined for further review by the Policy Coordination Office's Privacy Compliance Branch. You will be notified, via auto response email, of any message that is quarantined. The Privacy Compliance Branch will review all quarantined messages within one (1) business day from the date it was quarantined, and if appropriate, will contact you for additional information. You will also be notified when messages are cleared for electronic transmission and sent to the addressee(s).

Email messages containing unencrypted sensitive PII, **including personal messages sent from Census Bureau** email systems, is a violation of the Department of Commerce's "[Electronic Transmission of Personally Identifiable Information](#)" policy and other Federal statutes and will be deleted from the email system by the Privacy Compliance Branch, and again, you will be notified. This is intended to protect you from a disclosure, inadvertent or otherwise, that would put you at risk of violating these policies and statutes.

If this sounds cumbersome, it's because we take confidentiality seriously. Sensitive information, including sensitive information about yourself, must not be included in the body of an email. If it is necessary to send sensitive information in an email the information must be sent as an encrypted attachment following Departmental encryption policy – encrypt it even if the email is sent to your coworker who works on the same IT environment.

The encryption method that has been approved to meet Federal Information Processing Standards (FIPS) 140-2, "Security Requirements for Cryptographic Models" is Secret Agent. The Secret Agent software does NOT encrypt the body of email messages, nor does it encrypt email header information (email address of the sender, email address of recipient(s), date, time, etc.). Instructions on how to encrypt using [Secret Agent can be found on the Lan Technology Support Office's \(LTSO\) website](#). For details on the requirements for protecting PII and other sensitive information during electronic transmissions, refer to the [DOC Electronic Transmission of PII Policy](#). Additional information can also be obtained from the [Acceptable Use Policy for U.S. Census Bureau Information Technology Systems](#).

The Privacy Compliance Branch has developed a document entitled [“Understanding Types of Data and How They Are Protected”](#) which provides a brief summary of different categories of data, a short explanation of what information should be protected, gives pointers on assessing information that contains PII, and explains the laws and guidelines that govern the Census Bureau.

Enough emphasis cannot be placed on the importance of protecting sensitive information and the integral role each of us plays in ensuring sensitive information is handled properly. We appreciate your help and if you have any questions regarding the protection of PII and other sensitive information, please contact Byron Crenshaw, Chief of the Privacy Compliance Branch on 301-763-6440.

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

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and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
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[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

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- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

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DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn GOLDSTEIN.ZACHARY.G.1228698985
Date: 2016.08.30 15:28:33 -04'00'

Zachary Goldstein, NOAA CIO

Email Message Temporarily Quarantined: beneficiaries and benefits 03/08/16

PC

pco.dlp.review@census.gov

Reply all |

Tue 3/8/2016 1:20 PM

A scan by the Census Bureau Data Loss Prevention (DLP) system has detected that your email with the subject: "beneficiaries and benefits" dated "08 Mar 2016 13:20:03 -0500" may contain sensitive information that by policy is prohibited from being sent in an unencrypted electronic transmission. As a result, your email has been quarantined.

Email Information:

Sender: john_doe@census.gov

Recipient: jane_doe@gmail.com

Subject: beneficiaries and benefits

Timestamp: 08 Mar 2016 13:20:03 -0500

DLP Violation: US Social Security Numbers

System: hq-mail2.tco.census.gov

Sending unencrypted sensitive information, including sensitive information about yourself, from Census Bureau email systems is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy (<http://go.usa.gov/E6xF>).

WHAT YOU MUST DO: 1) Please recheck your email message and remove the sensitive PII or financial information (credit card or bank account numbers) before resending, or 2) place the sensitive information in an attachment and resend as an encrypted file using approved encryption software, Accellion (<http://go.usa.gov/E6rH>) or Secret Agent (<http://go.usa.gov/cwBXA>).

Urgent messages can be sent as an encrypted file without the sensitive information in question OR forwarded by some other means (e.g., faxing). If sending your file by fax, you must alert the intended recipient who in turn must acknowledge receipt of the file. IMPORTANT NOTE: sending financial information such as credit card or bank account numbers by fax is prohibited by departmental policy. See the Commerce Acquisition Manual, Section 2.9 "Card and Account Security" for further information.

If, after your review, you think your email message has been quarantined in error, please contact the Privacy Compliance Branch (301-763-6440) for further review of the quarantined message.

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NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

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Signed this ____ day of _____, 2016.

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ou OTHER, cn GOLDSTEIN.ZACHARY.G.1228698985
Date: 2016.08.30 15:28:33 -04'00'

Zachary Goldstein, NOAA CIO

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, November 30, 2016 3:50 PM
To: John McLemore - NOAA Federal
Cc: Robert Swisher - NOAA Federal; Tom Taylor; Eric Williams - NOAA Affiliate
Subject: Fwd: DLP Meeting Takeaways
Attachments: DLP Plan Final signed.pdf; DLP-Memo(Signed-EHerbst and CPurvis (4-15-16).pdf

Hello John,

As I'd mentioned at the beginning of the month, (b)(5)

[REDACTED]

[REDACTED]

(b)(5)

[REDACTED]

Thanks in advance for any next-steps you'd suggest as to Union obligations.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

----- Forwarded message -----

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Wed, Nov 30, 2016 at 3:13 PM
Subject: DLP Meeting Takeaways
To: David Bedell - NOAA Federal <David.Bedell@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Robert Hembrook - NOAA Federal <robert.hembrook@noaa.gov>, Jerry McNamara <Jerome.McNamara@noaa.gov>
Cc: Tonya Banks - NOAA Federal <Tonya.B.Banks@noaa.gov>, Stefan Leeb - NOAA Federal

<stefan.leebe@noaa.gov>, Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov>, Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>, Tom Taylor <tom.taylor@noaa.gov>

Hi Everyone--

As discussed, here are the takeaways from the meeting.

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- [Redacted]

- [Redacted]

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



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- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800-53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800-53A to develop their own assessment procedures.

- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

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Zachary Goldstein, NOAA CIO




APR 15 2016

MEMORANDUM FOR: Heads of Operating Units and Secretarial Officers

FROM:

Catrina D. Purvis 
Senior Agency Official for Privacy (SAOP) &
Chief Privacy Officer

Ellen Herbst 
Chief Financial Officer &
Assistant Secretary for Administration

SUBJECT: Departmental Privacy Standards for Commerce Data Loss
Prevention (DLP) Security Tools

The purpose of this memorandum is to establish a requirement for all bureaus/operating units (BOUs) to configure their Data Loss Prevention (DLP) security tools to implement privacy control capabilities that meet Departmental privacy DLP standards. This requirement will enhance privacy protections and reduce personally identifiable information (PII) breaches within Commerce.

BACKGROUND

DLP is a term that refers to both the policy and information security tools used to identify, restrict, monitor, and protect sensitive data in use, in motion, and at rest. DLP security tools detect and prevent unauthorized attempts to copy or send sensitive data, intentionally or unintentionally, without authorization. On July 7, 2010, Departmental guidance announcing the implementation of a DLP program was issued in a document titled "Immediate Enablement of a DLP Security Tool."

On December 17, 2014, the Commerce Privacy Council's DLP Working Group (commissioned by the then-General Counsel) produced a *Privacy DLP Working Group Recommendations Report*. In furtherance of the 2010 guidance, the report recommended requiring all BOUs to implement DLP-based privacy control capabilities and provided minimum privacy DLP standards for electronic transmissions of sensitive PII (incoming and outgoing email messages or internet postings). Implementation of these standards results in all unsecured electronic transmission of sensitive PII attempts on any Commerce system to be blocked and redirects senders to use an approved secured

transmission method. Many BOUs have implemented the recommended privacy DLP standards across all of their systems and others have made significant progress toward that end. This memorandum formally requires all BOUs to implement privacy DLP capabilities that satisfy the existing minimum standards set forth in the working group's attached report.

REQUIRED ACTIONS

Accordingly, the following actions are required and must be submitted to the Commerce Senior Agency Official for Privacy at CPO@doc.gov within 120 days from the date of this memorandum:

- BOUs with existing DLP security tool capabilities – Provide a confirmation email that the minimum privacy DLP control standards identified in the DLP Working Group Report have been implemented.
- BOUs with no existing DLP security tool capabilities – Provide an implementation plan to meet the minimum Privacy DLP Standards within one (1) year. (The implementation plan may propose an alternative method/process to achieve the standards).

Please direct any questions regarding this memorandum to Lisa Martin, Deputy Director of Departmental Privacy Operations, who can be reached at (202) 482-2459 and lmartin1@doc.gov.

cc: BOU Chief Privacy Officers
Chief Information Officers
Chief Financial Officers

Attachment:

DOC Privacy DLP Working Group Recommendations

United States Department of Commerce

Privacy Data Loss Prevention (DLP)
Working Group
Recommendations

December 17, 2014



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**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

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**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

SUMMARY

This document contains recommendations from the Department of Commerce (DOC) inter-agency network based Privacy Data Loss Prevention (DLP) Working Group for implementing a DOC wide DLP privacy program. Information in this recommendation will change as we gain greater experience using DLP email scan, new technologies are introduced, and new OMB requirements are implemented. As a result, it is the recommendation of the Privacy DOC Privacy DLP Working Group that these recommendations be reviewed annually and updated as appropriate.

The DOC inter-agency Privacy DLP Working Group was commissioned to research, investigate, and propose recommendations for implementing a department wide DLP privacy program. The group's primary objective was to provide high-level recommendations for a department wide DLP privacy program that will minimize the number of sensitive personally identifiable information (PII) email incidents while considering the level of technical, human, and financial resources needed to implement a DLP privacy program. DLP accomplishes these tasks using automated tools that implement policies and processes to identify where sensitive information is stored throughout the department's network, restrict access to that sensitive information, and monitor transmission of sensitive data in and out of the network boundary.

The Privacy DLP working group consisted of a small group of privacy advocates from the Department of Commerce, the Bureau of Industry and Security (BIS), the Bureau of Economic Analysis (BEA), the U.S. Census Bureau, the National Oceanic and Atmospheric Administration (NOAA), the National Institute of Standards and Technology (NIST), and the U.S. Patent and Trademark Office (USPTO). Byron Crenshaw, Privacy Compliance Chief of the U.S. Census Bureau, chaired this group.

This document describes the following recommendations from the Privacy DLP Working Group:

1. Security/Sensitivity Classification of DLP Personnel
2. Department-wide Privacy DLP Standard Process
3. DLP Minimum Scanning (filtering) Configuration – Incoming & Outgoing Mail
4. Filtering Criteria
5. Internet Postings
6. Handling of False Positives
7. Email Message Alerts to the Email Sender
8. Implementation Plan & Deadline
9. Reporting Requirements

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

SCOPE

The recommendations of this document are for all unencrypted HTTP entities and messaging traffic (incoming or outgoing email messages or internet postings) that are leaving or entering a DOC network.

RECOMMENDATIONS

1. Security/Sensitivity Classification of DLP Personnel

Standard DLP operating procedures may allow DLP personnel access to confidential and/or sensitive information pertaining to persons, government or private entities. The DOC Privacy DLP Working Group recommends that DLP personnel sign a non-disclosure form prior to working with DLP technologies, acknowledging the requirements and responsibilities for information that is handled and made available. In addition, agencies may consider conducting additional security/suitability clearances for personnel involved with DLP.

2. Department-Wide DLP Standards

It is the recommendation of the DOC Privacy DLP Working Group that the DOC adopt the following practice as standard DLP privacy operating procedures:

- all unencrypted electronic messages (email messages or internet postings) that are leaving or entering a DOC network be filtered through the DLP solution (minimum scanning configuration is described in Section 3);
- suspected sensitive PII detected by the DLP shall be quarantined for a specified number of days as determined by the department or the OU;
- for each day an email is stored in quarantined, the email sender shall be sent an auto-generated email message from the DLP stating that his/her email will be deleted on [specified date] unless action is taken;
- if no action is taken on email messages quarantined by the DLP within the pre-determined number of days, the email message shall be deleted and the sender shall be notified;
- to resolve a suspected false positive, the email sender can either:
 - retransmit the email message with proper encryption,
 - redact the message of all sensitive information and retransmit, or,
 - contact the privacy staff to resolve suspected false positive (described in Section 6 – Handling of False Positives).

3. DLP Minimum Scanning Configuration

A successful department wide DLP privacy program must begin with a standard set of personally identifiable information (PII) items that each operating unit must consistently treat with special handling procedures during electronic transmission. The identification of sensitive PII is often based on the context of how the information is used. Since there are limitations on contextual understanding by DLP software, the list of sensitive PII identified by the DOC inter-agency Privacy DLP Working Group will consist primarily of single (standalone) sensitive PII items, with some basic grouping or combination of other PII or commonly associated text. Examples of these items are listed in Table 1.

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A. Egress Scanning

It is the recommendation of the DOC Privacy DLP Working Group that all outgoing email messages sent from a DOC network be subject to DLP filtering for sensitive PII based on the minimum filtering criteria as outlined in this document.

Note on Agencies' Rights: DOC operating units must reserve the right to add additional PII to their DLP filter as necessary. However, minimum DLP items identified by the DOC DLP Team cannot be detracted.

B. Ingress Scanning

Historical research by DOC operating units that are currently using a DLP software has revealed that incoming email messages will sometime contain sensitive PII which can go undetected by the operating unit. It is not until the operating unit attempts to reply or forward the message outside of the DOC network that the sensitive PII in the e-mail message is detected. It was also revealed that sometimes the incoming e-mail message will be copied and filed in an unsecure environment because the sensitive PII within the e-mail message remained undetected.

To address this problem, it is the recommendation of the DOC Privacy DLP Working Group that all e-mail messages coming into DOC networks be subject to the same DLP filtering criteria as outgoing email messages. Incoming e-mail messages containing sensitive PII as identified by the DLP filtering scan shall be blocked by the DLP from entering the DOC network. It is recommended that electronic notification be sent to the sender describing the policy prohibition, with instructions for using DOC approved encryption software (i.e., Accellion). In addition, it is also recommended that the intended recipient of the blocked email message be electronically notified that an incoming e-mail message has been blocked from receipt into the DOC network because of a possible DLP policy prohibition. Recommended suggestions for the wording of these notification messages are included in Appendix A.

4. Filtering Standard

The DOC Privacy DLP Working Group has identified a minimum standard for DLP privacy implementation. This filtering standard includes sensitive PII, and non-sensitive PII combined with other information, such as financial and/or medical information, which when combined, becomes sensitive PII.

DOC operating units must include these items in the standard filters of their DLP filtering items, additional filtering items can be added by DOC operating units as necessary.

If a quarantined message matches for more than one DLP filter item, the DLP scanning rules should terminate examination and trigger countermeasures on the first matching item.

It is the recommendation of the DOC Privacy DLP Working Group that the DLP filtering hierarchy be in this order.

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Recommendations**

1. Social security number
2. Passport number
3. Driver's license/state identification number
4. Bank account/credit card number
5. Medical/HIPAA Information
6. Date of birth
7. Mother's maiden name

This order means if there is an email message that has content that recognize the SNN and HIPPA Patient Identification Number, the DLP would recognize the SSN as the violation and not continue processing for the HIPAA Patient Identifier.

4.1 U.S. Social Security Number Filters

The U.S. Social Security Number classifier requires a properly formatted number as well as other supporting data, such as a date of birth, name, or the text string "SSN".

U.S. SSN Examples:

- 123-45-6789 (No match because of no supporting information)
- 123-45-6789 July 4 (Match because a partial date is linked to 9-digit string number)
- 123-45-6789 7/4/1980 (Match because a possible date is linked to 9-digit string number)
- 123-45-6789 7/4 (No match)
- 123-45-6789 987-65-4321 (Match because of more than one 9-digit string number increases risk, threat, and harm)
- SSN: 123-45-6789 (Match)
- Joe Smith 123-45-6789 (Match because name linked to 9-digit number)
- 123-45-6789 CA 94066 (Match because state and zip code associated with 9-digit number)

4.2 Passport Number

The Passport Number filter requires inspection for the word "Passport," in English and Spanish, followed by a string of digits.

4.3 Driver's License/State Identification Number

Driver's license or other state identification number must be filtered by the words "Driver's License" or "State Identification," followed by a string of numeric or alphanumeric values.

String of numeric data including punctuation (dashes, periods, etc.).

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Recommendations**

4.4 Financial Account/Credit Card Number

The words "routing," "accounting," "credit card," or "cc," followed by a string of numbers with or without dashes.

4.5 Medical and Health Insurance Portability and Accountability (HIPAA) Filters

It is the recommendation of the DOC Privacy DLP Working Group that medical and other HIPAA considerations be included in the DLP data dictionary. The Medical/HIPAA DLP scan shall require a match on the medical classifier AND a match on a personal information identifier such as full name, U.S. Social Security Number, U.S. National Provider Identifier, or custom patient identification number, to be considered a Medical/HIPAA DLP violation.

Medical Information Examples:

personal identifier such as, full name, SSN, national provider identifier, or custom patient identification number -

- ADHD
- AIDS
- Arthritis
- Asthma
- Autism
- Cancer
- Chlamydia
- Diabetes
- Epilepsy
- Flu (Influenza)
- Herpes
- Giardiasis
- Gonorrhea
- Heart Disease
- Hepatitis
- HIV
- HPV (Human papillomavirus)
- Influenza
- Meningitis
- MRSA (Methicillin Resistant Staphylococcus aureus)
- Obesity
- Salmonella
- Scabies

**Commerce Interagency
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Recommendations**

- Sexually Transmitted Diseases
- Stroke
- Trichomonas
- Trichomoniasis
- Tuberculosis (TB)

4.6 Date of Birth

Date of birth filter must include a combination of numeric or alphanumeric dates associated with the words “date of birth”, “DOB”, or “birth date,” and must be linked with a unique personal identifiable such as name or social security number.

5. Internet Postings

Sensitive PII posted for consumption via private or public websites can present a much greater risk of harm than sensitive PII transmitted through email because of the potential for a wider audience and exposure. It is the recommendation of this group that Internet traffic be scanned for DLP filtering items. This includes posts from DOC controlled networks going out to official DOC social media websites and pages, and posts inbound to DOC controlled and monitored websites and pages, i.e., Web forums. Attempted postings containing information prohibited by DLP filter criteria shall be blocked from release on the DOC controlled websites and pages, to the Internet.

6. Handling of False Positives

For the purpose of this recommendation, a “false positive” is defined as an electronic message that was falsely quarantined by the DLP solution.

If a sender suspects that his/her email message has been falsely quarantined by the DLP, it is the recommendation of the DOC Privacy DLP Working Group that the following actions be taken:

- the sender shall notify the privacy staff of the suspected false positive;
- a privacy professional will review the email to determine if the quarantined email message is a DLP false positive;
- upon confirmation by privacy professional that the email message was falsely quarantined by the DLP, the email message will be released by the privacy professional to the addressee(s);
- the sender shall be notified that the message has been reviewed by a privacy staff member and released to the intended recipient(s).

If the privacy professional determines that the email message is not a false positive, i.e., contains PII that is prohibited from unencrypted electronic transmission, it is the recommendation of this group that the following actions be taken:

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- the email message will be manually deleted by the privacy staff;
- the sender will be notified that the message has been reviewed by a privacy staff member and found to contain information that is prohibited by policy from unencrypted email transmission.

If no action is taken by the sender for a message that has been quarantined by the DLP after a specified number of days (as defined by either the department or the OU), it is the recommendation of this group that the following actions be taken:

- the email message be automatically deleted by the DLP solution;
- the sender shall receive an auto-generated email message from the DLP solution stating that the email message [email subject and date] has been deleted by the DLP.

7. Email Messages

It is the recommendation of the DOC Privacy DLP Working Group that when an email message is quarantined by the DLP email scan, the sender shall receive an auto-generated email message describing the possible violation, the quarantine of the email message, and the steps to take to release the email message to the intended recipients. If the employee suspects the DLP quarantined the email in error (false positive) and contacts the privacy office for assistance, another email message will be sent stating the results of the privacy review. An example of each of these letters is included under the Email Messages section of the Appendix A.

8. Implementation Plan & Deadline

It is the recommendation of the DOC Privacy DLP Working Group that a department-wide policy be written based on these recommendations. All DOC operating units shall be given one year from date of issue to comply with the policy.

9. Reporting Requirements

Incidents captured by the DLP are not released from a DOC controlled environment. Since they remain within the control of the DOC, the DOC Privacy DLP Working Group recommends that DLP incidents be considered an attempted violation of policy and not an actual breach. Therefore, DLP incidents shall not be required for CIRT reporting.

To monitor the effectiveness of the DLP program, it is the recommendation of the DOC Privacy DLP Working Group that all operating units maintain record of the number of incidents captured by the DLP, the number of false positives, the number of avoid breaches, and the number of attempted self disclosed sensitive information.

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**Table 1
Examples of Specific Sensitive Items**

Name		X
Address		X
Telephone (cell/land)		X
Date of Birth		X
Mother's maiden name		X
Social Security Number	X	
Bio-metric (fingerprint, palm print, hand geometry, iris recognition, retina, etc.)		X
Medical information, except brief references to absences from work		X
Passport Number		X
Bank Account/Credit Card Number or Account	X	
Driver's license/state identification number		X
Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and results of background investigations		X
Criminal history		X
Any information that may stigmatize or adversely affect an individual		X

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers, including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual.

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Table 2

DLP Solutions by DOC Operating Unit

	None	RSA	Iron Port	ScanMail	Secure Zip (Google cloud solution)	Trend Micro	Websense	Axways
BEA						X		
Census			X					
NIST	X							
PTO				X				X¹

¹ Used for email messages coming and going to the internet.

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Appendix A

Related Laws, Regulations, Policies, and Documents

- Privacy Act of 1974
- U.S. Department of Commerce Office of the Chief Information Officer, Electronic Transmission of Personally Identifiable Information
- U.S. Department of Commerce Office of the Chief Information Officer, IT Privacy Policy
- Office of Management and Budget Memorandum M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information
- Office of Management and Budget Memorandum M-06-19, Reporting Incidents Involving PII
- Office of Management and Budget Memorandum M-06-16, Protection of Sensitive Agency Information
- Office of Management and Budget Memorandum M-06-15, Safeguarding PII
- Commerce CIO's Memorandum on Safeguarding PII

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Appendix B

Email Messages

Employees can potentially receive two of the three DLP email messages:

1. **Message #1 - alerts the user that his/her message, and if appropriate any attachments, have been quarantined by the DLP. This message is to be sent each day until the quarantined email is either released by the privacy office or deleted.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

A scan by the [insert name of agency] Data Loss Prevention (DLP) system has detected that your email with the subject: [subject], dated [date email was sent] may contain sensitive information that by policy is prohibited from email transmission without proper encryption. As a result, your email has been placed in quarantine for [specified] days. Please take one of the following actions to resolve this issue:

1. *Re-transmit your message using approved email encryption; or,*
2. *Contact the privacy staff on (777) 777-7777, if you think your email was quarantined by the DLP email scan in error.*

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

2. **Message #2 – is sent to the email sender who requested review by a privacy professional because a false positive is suspected, and after review, the message is released to the intended recipients.**

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EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

YOUR EMAIL MESSAGE HAS BEEN SENT

The below email has been reviewed by the [name of agency's privacy office] and released to the intended receiver(s) on [date original message released].

If you have any questions please contact the [insert privacy office's name and telephone number].

- 3. Message #3 - alerts the user that his/her email message, and any attachments, has been deleted and not sent. This message is to be sent after a quarantined message has not been acted upon after the pre-determined period of time.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

The detention period of your quarantined email message has expired and your message has been deleted. Your message was not sent to the intended recipient.

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

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Appendix C

DEFINITIONS

Business Identifiable Information (BI): consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets, and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. “Commercial” is not confined to records that reveal “basic commercial operations” but includes any records [or information] in which the submitter has a “commercial interest” and can include information submitted by a nonprofit entity. Or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C. 9).

False Positive: messages quarantined by the DLP that were later determined to not have contained any information that is prohibited from electronic transmission.

Personally Identifiable Information (PII): OMB Memorandum M-07-16 states that PII “refers to information which can be used to distinguish or trace an individual’s identity, such as name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

Sensitive But Unclassified (SBU): is a designation of information in the United States federal government that, though unclassified, often requires strict controls over its distribution. SBU is a broad category of information that includes material covered by such designations as For Official Use Only (FOUO), Law Enforcement Sensitive (LES), Sensitive Homeland Security Information, Security Sensitive Information (SSI), Critical Infrastructure Information (CII), etc. It also includes Internal Revenue Service materials like individual tax records, systems information, and enforcement procedures. Some categories of SBU information have authority in statute or regulation (e.g. SSI, CII) while others, including FOUO, do not.

Sensitive Personally Identifiable Information (SPII): Department of Commerce’s policy on Electronic Transmission of PII states that “sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother’s maiden name, but each of these elements would not be sensitive independent of one another.”

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Sensitive Security Information (SSI): is a category of sensitive but unclassified information under the United States government's information sharing and control rules, often used by TSA and CBP. SSI is information obtained in the conduct of security activities whose public disclosure would, in the judgment of specified government agencies, harm transportation security, be an unwarranted invasion of privacy, or reveal trade secrets or privileged or confidential information.

UNCLASSIFIED/FOUO: is used for documents or products that contain material that is exempt from release under the Freedom of Information Act. It is treated as confidential, which means it cannot be discarded in the open trash, made available to the general public, or posted on an uncontrolled website. It can, however, be shared with individuals with a need to know the content, while still under the control of the individual possessing the document or product.

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UNRESOLVED ISSUES

Issue 1: Identify BII DLP requirements.

Resolution: Pending

Issue 2: How to resolve false positives of incoming email messages?

Resolution: Pending

RESOLVED ISSUES

Issue 1: Definition of a DLP breach:

Resolution: The official OMB definition of a breach is *“The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.”*

The lost of PII email incidents captured by the DLP shall not be considered breaches since the email containing the PII has never left our control.

Issue 2: Treatment of truncated IDs (SSNs, Passports numbers, credit card numbers, etc.)

Resolution: Page 2 of the Department of Commerce Policy on the Electronic Transmission of Personally Identifiable Information states the following:

“Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed.”

The treatment of truncated SSNs will be handled in accordance with the official DOC policy until such time when this requirement is rescinded by the department.

Other truncated numbers, i.e., passport numbers, credit card numbers, shall not be considered sensitive unless it is accompanied by other identifying information. (this adds to the DOC policy, since the policy does not address the use of truncated numbers other than SSN.

Issue 3: How to handle DLP incidents flagged after hours.

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Resolution: The automated email alert will immediately notify the sender that his/her email message has been quarantined. The message shall provide instructions for the sender to re-transmit the email using approved encryption software or through Accellion to successfully transmit the email. Secure FTP.

Issue 4: Treatment of incoming messages containing sensitive PII.

Resolution: The Privacy DLP Working Group recommends incoming messages be subject to DLP filtering, however, the decision to flag and quarantine incoming email messages containing sensitive PII shall be at the discretion of each operating unit.

Issue 5: Treatment of messages posted on agency's social media site

Resolution: traffic to the internet should be considered.

Issue 6: Shall we consider one DLP solution for all DOC OUs?

Resolution: No. Each operating unit must be able to employ a DLP solution that is compatible with existing technical capabilities and policies.

From: Stefan Leeb - NOAA Federal <stefan.leeb@noaa.gov>
Sent: Monday, December 5, 2016 10:36 AM
To: David Bedell
Cc: Mark Graff - NOAA Federal
Subject: Fwd: DLP Meeting Takeaways
Attachments: NOAA DLP Plan Final signed.pdf

Hi Dave,

You will need to let me know how many hours a week and for how many weeks are needed to implement the solution.

Please also let me know how many labor hours will be required to maintain it (on the UMS side), not the CSD side.

From that, I can work the \$.

Thanks.

Stefan

Stefan Leeb, MBA, PMP, CISSP
Chief, Enterprise Services Branch
Service Delivery Division
NOAA Office of the Chief Information Officer
U.S. Department of Commerce
301 628 5709 ofc
240-429-0619 cell
stefan.leeb@noaa.gov

----- Forwarded message -----

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Wed, Nov 30, 2016 at 3:13 PM
Subject: DLP Meeting Takeaways
To: David Bedell - NOAA Federal <David.Bedell@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Robert Hembrook - NOAA Federal <robert.hembrook@noaa.gov>, Jerry McNamara <Jerome.McNamara@noaa.gov>
Cc: Tonya Banks - NOAA Federal <Tonya.B.Banks@noaa.gov>, Stefan Leeb - NOAA Federal <stefan.leeb@noaa.gov>, Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov>, Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>, Tom Taylor <tom.taylor@noaa.gov>

Hi Everyone--

As discussed, here are the takeaways from the meeting.

(b)(5)

:

(b)(5) [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

■ [Redacted list item 1]

■ [Redacted list item 2]

■ [Redacted list item 3]

■ [Redacted list item 4]

(b)(5)

Thanks--and let me know if I've missed anything. Talk to you all soon,

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800-53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800-53A to develop their own assessment procedures.

- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

GOLDSTEIN.ZACHARY.G.1228698985
ARY.G.1228698985

Digitally signed by
GOLDSTEIN.ZACHARY.G.1228698985
DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn GOLDSTEIN.ZACHARY.G.1228698985
Date: 2016.08.30 15:28:33 -04'00'

Zachary Goldstein, NOAA CIO

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, December 1, 2016 5:27 PM
To: Stacey Davidson - NOAA Federal
Cc: Robert Swisher - NOAA Federal; Sarah Brabson - NOAA Federal; Tom Taylor; Dennis Morgan - NOAA Federal
Subject: Fwd: DLP Meeting Takeaways
Attachments: NOAA DLP Plan Final signed.pdf; DLP-Memo(Signed-EHerbst and CPurvis (4-15-16).pdf

Good Evening Stacey,

I wanted to reach out and discuss (b)(5)

Is there a time next week we could discuss how to best loop WFMO into this process?

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

----- Forwarded message -----

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Wed, Nov 30, 2016 at 3:13 PM
Subject: DLP Meeting Takeaways
To: David Bedell - NOAA Federal <David.Bedell@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Robert Hembrook - NOAA Federal <robert.hembrook@noaa.gov>, Jerry McNamara <Jerome.McNamara@noaa.gov>
Cc: Tonya Banks - NOAA Federal <Tonya.B.Banks@noaa.gov>, Stefan Leeb - NOAA Federal <stefan.leeb@noaa.gov>, Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov>, Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>, Tom Taylor <tom.taylor@noaa.gov>

Hi Everyone--

As discussed, here are the takeaways from the meeting.

(b)(5)

(b)(5)

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

- [Redacted list item]

- [Redacted list item]

- [Redacted list item]

- [Redacted list item]

(b)(5)

Thanks--and let me know if I've missed anything. Talk to you all soon,

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)


(b)(6) (C)




APR 15 2016

MEMORANDUM FOR: Heads of Operating Units and Secretarial Officers

FROM:

Catrina D. Purvis 
Senior Agency Official for Privacy (SAOP) &
Chief Privacy Officer

Ellen Herbst 
Chief Financial Officer &
Assistant Secretary for Administration

SUBJECT: Departmental Privacy Standards for Commerce Data Loss
Prevention (DLP) Security Tools

The purpose of this memorandum is to establish a requirement for all bureaus/operating units (BOUs) to configure their Data Loss Prevention (DLP) security tools to implement privacy control capabilities that meet Departmental privacy DLP standards. This requirement will enhance privacy protections and reduce personally identifiable information (PII) breaches within Commerce.

BACKGROUND

DLP is a term that refers to both the policy and information security tools used to identify, restrict, monitor, and protect sensitive data in use, in motion, and at rest. DLP security tools detect and prevent unauthorized attempts to copy or send sensitive data, intentionally or unintentionally, without authorization. On July 7, 2010, Departmental guidance announcing the implementation of a DLP program was issued in a document titled "Immediate Enablement of a DLP Security Tool."

On December 17, 2014, the Commerce Privacy Council's DLP Working Group (commissioned by the then-General Counsel) produced a *Privacy DLP Working Group Recommendations Report*. In furtherance of the 2010 guidance, the report recommended requiring all BOUs to implement DLP-based privacy control capabilities and provided minimum privacy DLP standards for electronic transmissions of sensitive PII (incoming and outgoing email messages or internet postings). Implementation of these standards results in all unsecured electronic transmission of sensitive PII attempts on any Commerce system to be blocked and redirects senders to use an approved secured

transmission method. Many BOUs have implemented the recommended privacy DLP standards across all of their systems and others have made significant progress toward that end. This memorandum formally requires all BOUs to implement privacy DLP capabilities that satisfy the existing minimum standards set forth in the working group's attached report.

REQUIRED ACTIONS

Accordingly, the following actions are required and must be submitted to the Commerce Senior Agency Official for Privacy at CPO@doc.gov within 120 days from the date of this memorandum:

- BOUs with existing DLP security tool capabilities – Provide a confirmation email that the minimum privacy DLP control standards identified in the DLP Working Group Report have been implemented.
- BOUs with no existing DLP security tool capabilities – Provide an implementation plan to meet the minimum Privacy DLP Standards within one (1) year. (The implementation plan may propose an alternative method/process to achieve the standards).

Please direct any questions regarding this memorandum to Lisa Martin, Deputy Director of Departmental Privacy Operations, who can be reached at (202) 482-2459 and lmartin1@doc.gov.

cc: BOU Chief Privacy Officers
Chief Information Officers
Chief Financial Officers

Attachment:

DOC Privacy DLP Working Group Recommendations

United States Department of Commerce

Privacy Data Loss Prevention (DLP)
Working Group
Recommendations

December 17, 2014



Working Group Members

Byron C. ...
Stephen ...
Jun Kim, ...
Ida Mix, ...
Carolyn ...
Solanki ...
Eric Williams

**Commerce Interagency
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Recommendations**

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SUMMARY

This document contains recommendations from the Department of Commerce (DOC) inter-agency network based Privacy Data Loss Prevention (DLP) Working Group for implementing a DOC wide DLP privacy program. Information in this recommendation will change as we gain greater experience using DLP email scan, new technologies are introduced, and new OMB requirements are implemented. As a result, it is the recommendation of the Privacy DOC Privacy DLP Working Group that these recommendations be reviewed annually and updated as appropriate.

The DOC inter-agency Privacy DLP Working Group was commissioned to research, investigate, and propose recommendations for implementing a department wide DLP privacy program. The group's primary objective was to provide high-level recommendations for a department wide DLP privacy program that will minimize the number of sensitive personally identifiable information (PII) email incidents while considering the level of technical, human, and financial resources needed to implement a DLP privacy program. DLP accomplishes these tasks using automated tools that implement policies and processes to identify where sensitive information is stored throughout the department's network, restrict access to that sensitive information, and monitor transmission of sensitive data in and out of the network boundary.

The Privacy DLP working group consisted of a small group of privacy advocates from the Department of Commerce, the Bureau of Industry and Security (BIS), the Bureau of Economic Analysis (BEA), the U.S. Census Bureau, the National Oceanic and Atmospheric Administration (NOAA), the National Institute of Standards and Technology (NIST), and the U.S. Patent and Trademark Office (USPTO). Byron Crenshaw, Privacy Compliance Chief of the U.S. Census Bureau, chaired this group.

This document describes the following recommendations from the Privacy DLP Working Group:

1. Security/Sensitivity Classification of DLP Personnel
2. Department-wide Privacy DLP Standard Process
3. DLP Minimum Scanning (filtering) Configuration – Incoming & Outgoing Mail
4. Filtering Criteria
5. Internet Postings
6. Handling of False Positives
7. Email Message Alerts to the Email Sender
8. Implementation Plan & Deadline
9. Reporting Requirements

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SCOPE

The recommendations of this document are for all unencrypted HTTP entities and messaging traffic (incoming or outgoing email messages or internet postings) that are leaving or entering a DOC network.

RECOMMENDATIONS

1. Security/Sensitivity Classification of DLP Personnel

Standard DLP operating procedures may allow DLP personnel access to confidential and/or sensitive information pertaining to persons, government or private entities. The DOC Privacy DLP Working Group recommends that DLP personnel sign a non-disclosure form prior to working with DLP technologies, acknowledging the requirements and responsibilities for information that is handled and made available. In addition, agencies may consider conducting additional security/suitability clearances for personnel involved with DLP.

2. Department-Wide DLP Standards

It is the recommendation of the DOC Privacy DLP Working Group that the DOC adopt the following practice as standard DLP privacy operating procedures:

- all unencrypted electronic messages (email messages or internet postings) that are leaving or entering a DOC network be filtered through the DLP solution (minimum scanning configuration is described in Section 3);
- suspected sensitive PII detected by the DLP shall be quarantined for a specified number of days as determined by the department or the OU;
- for each day an email is stored in quarantined, the email sender shall be sent an auto-generated email message from the DLP stating that his/her email will be deleted on [specified date] unless action is taken;
- if no action is taken on email messages quarantined by the DLP within the pre-determined number of days, the email message shall be deleted and the sender shall be notified;
- to resolve a suspected false positive, the email sender can either:
 - retransmit the email message with proper encryption,
 - redact the message of all sensitive information and retransmit, or,
 - contact the privacy staff to resolve suspected false positive (described in Section 6 – Handling of False Positives).

3. DLP Minimum Scanning Configuration

A successful department wide DLP privacy program must begin with a standard set of personally identifiable information (PII) items that each operating unit must consistently treat with special handling procedures during electronic transmission. The identification of sensitive PII is often based on the context of how the information is used. Since there are limitations on contextual understanding by DLP software, the list of sensitive PII identified by the DOC inter-agency Privacy DLP Working Group will consist primarily of single (standalone) sensitive PII items, with some basic grouping or combination of other PII or commonly associated text. Examples of these items are listed in Table 1.

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A. Egress Scanning

It is the recommendation of the DOC Privacy DLP Working Group that all outgoing email messages sent from a DOC network be subject to DLP filtering for sensitive PII based on the minimum filtering criteria as outlined in this document.

Note on Agencies' Rights: DOC operating units must reserve the right to add additional PII to their DLP filter as necessary. However, minimum DLP items identified by the DOC DLP Team cannot be detracted.

B. Ingress Scanning

Historical research by DOC operating units that are currently using a DLP software has revealed that incoming email messages will sometime contain sensitive PII which can go undetected by the operating unit. It is not until the operating unit attempts to reply or forward the message outside of the DOC network that the sensitive PII in the e-mail message is detected. It was also revealed that sometimes the incoming e-mail message will be copied and filed in an unsecure environment because the sensitive PII within the e-mail message remained undetected.

To address this problem, it is the recommendation of the DOC Privacy DLP Working Group that all e-mail messages coming into DOC networks be subject to the same DLP filtering criteria as outgoing email messages. Incoming e-mail messages containing sensitive PII as identified by the DLP filtering scan shall be blocked by the DLP from entering the DOC network. It is recommended that electronic notification be sent to the sender describing the policy prohibition, with instructions for using DOC approved encryption software (i.e., Accellion). In addition, it is also recommended that the intended recipient of the blocked email message be electronically notified that an incoming e-mail message has been blocked from receipt into the DOC network because of a possible DLP policy prohibition. Recommended suggestions for the wording of these notification messages are included in Appendix A.

4. Filtering Standard

The DOC Privacy DLP Working Group has identified a minimum standard for DLP privacy implementation. This filtering standard includes sensitive PII, and non-sensitive PII combined with other information, such as financial and/or medical information, which when combined, becomes sensitive PII.

DOC operating units must include these items in the standard filters of their DLP filtering items, additional filtering items can be added by DOC operating units as necessary.

If a quarantined message matches for more than one DLP filter item, the DLP scanning rules should terminate examination and trigger countermeasures on the first matching item.

It is the recommendation of the DOC Privacy DLP Working Group that the DLP filtering hierarchy be in this order.

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1. Social security number
2. Passport number
3. Driver's license/state identification number
4. Bank account/credit card number
5. Medical/HIPAA Information
6. Date of birth
7. Mother's maiden name

This order means if there is an email message that has content that recognize the SNN and HIPPA Patient Identification Number, the DLP would recognize the SSN as the violation and not continue processing for the HIPAA Patient Identifier.

4.1 U.S. Social Security Number Filters

The U.S. Social Security Number classifier requires a properly formatted number as well as other supporting data, such as a date of birth, name, or the text string "SSN".

U.S. SSN Examples:

- 123-45-6789 (No match because of no supporting information)
- 123-45-6789 July 4 (Match because a partial date is linked to 9-digit string number)
- 123-45-6789 7/4/1980 (Match because a possible date is linked to 9-digit string number)
- 123-45-6789 7/4 (No match)
- 123-45-6789 987-65-4321 (Match because of more than one 9-digit string number increases risk, threat, and harm)
- SSN: 123-45-6789 (Match)
- Joe Smith 123-45-6789 (Match because name linked to 9-digit number)
- 123-45-6789 CA 94066 (Match because state and zip code associated with 9-digit number)

4.2 Passport Number

The Passport Number filter requires inspection for the word "Passport," in English and Spanish, followed by a string of digits.

4.3 Driver's License/State Identification Number

Driver's license or other state identification number must be filtered by the words "Driver's License" or "State Identification," followed by a string of numeric or alphanumeric values.

String of numeric data including punctuation (dashes, periods, etc.).

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4.4 Financial Account/Credit Card Number

The words "routing," "accounting," "credit card," or "cc," followed by a string of numbers with or without dashes.

4.5 Medical and Health Insurance Portability and Accountability (HIPAA) Filters

It is the recommendation of the DOC Privacy DLP Working Group that medical and other HIPAA considerations be included in the DLP data dictionary. The Medical/HIPAA DLP scan shall require a match on the medical classifier AND a match on a personal information identifier such as full name, U.S. Social Security Number, U.S. National Provider Identifier, or custom patient identification number, to be considered a Medical/HIPAA DLP violation.

Medical Information Examples:

personal identifier such as, full name, SSN, national provider identifier, or custom patient identification number -

- ADHD
- AIDS
- Arthritis
- Asthma
- Autism
- Cancer
- Chlamydia
- Diabetes
- Epilepsy
- Flu (Influenza)
- Herpes
- Giardiasis
- Gonorrhea
- Heart Disease
- Hepatitis
- HIV
- HPV (Human papillomavirus)
- Influenza
- Meningitis
- MRSA (Methicillin Resistant Staphylococcus aureus)
- Obesity
- Salmonella
- Scabies

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- Sexually Transmitted Diseases
- Stroke
- Trichomonas
- Trichomoniasis
- Tuberculosis (TB)

4.6 Date of Birth

Date of birth filter must include a combination of numeric or alphanumeric dates associated with the words “date of birth”, “DOB”, or “birth date,” and must be linked with a unique personal identifiable such as name or social security number.

5. Internet Postings

Sensitive PII posted for consumption via private or public websites can present a much greater risk of harm than sensitive PII transmitted through email because of the potential for a wider audience and exposure. It is the recommendation of this group that Internet traffic be scanned for DLP filtering items. This includes posts from DOC controlled networks going out to official DOC social media websites and pages, and posts inbound to DOC controlled and monitored websites and pages, i.e., Web forums. Attempted postings containing information prohibited by DLP filter criteria shall be blocked from release on the DOC controlled websites and pages, to the Internet.

6. Handling of False Positives

For the purpose of this recommendation, a “false positive” is defined as an electronic message that was falsely quarantined by the DLP solution.

If a sender suspects that his/her email message has been falsely quarantined by the DLP, it is the recommendation of the DOC Privacy DLP Working Group that the following actions be taken:

- the sender shall notify the privacy staff of the suspected false positive;
- a privacy professional will review the email to determine if the quarantined email message is a DLP false positive;
- upon confirmation by privacy professional that the email message was falsely quarantined by the DLP, the email message will be released by the privacy professional to the addressee(s);
- the sender shall be notified that the message has been reviewed by a privacy staff member and released to the intended recipient(s).

If the privacy professional determines that the email message is not a false positive, i.e., contains PII that is prohibited from unencrypted electronic transmission, it is the recommendation of this group that the following actions be taken:

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- the email message will be manually deleted by the privacy staff;
- the sender will be notified that the message has been reviewed by a privacy staff member and found to contain information that is prohibited by policy from unencrypted email transmission.

If no action is taken by the sender for a message that has been quarantined by the DLP after a specified number of days (as defined by either the department or the OU), it is the recommendation of this group that the following actions be taken:

- the email message be automatically deleted by the DLP solution;
- the sender shall receive an auto-generated email message from the DLP solution stating that the email message [email subject and date] has been deleted by the DLP.

7. Email Messages

It is the recommendation of the DOC Privacy DLP Working Group that when an email message is quarantined by the DLP email scan, the sender shall receive an auto-generated email message describing the possible violation, the quarantine of the email message, and the steps to take to release the email message to the intended recipients. If the employee suspects the DLP quarantined the email in error (false positive) and contacts the privacy office for assistance, another email message will be sent stating the results of the privacy review. An example of each of these letters is included under the Email Messages section of the Appendix A.

8. Implementation Plan & Deadline

It is the recommendation of the DOC Privacy DLP Working Group that a department-wide policy be written based on these recommendations. All DOC operating units shall be given one year from date of issue to comply with the policy.

9. Reporting Requirements

Incidents captured by the DLP are not released from a DOC controlled environment. Since they remain within the control of the DOC, the DOC Privacy DLP Working Group recommends that DLP incidents be considered an attempted violation of policy and not an actual breach. Therefore, DLP incidents shall not be required for CIRT reporting.

To monitor the effectiveness of the DLP program, it is the recommendation of the DOC Privacy DLP Working Group that all operating units maintain record of the number of incidents captured by the DLP, the number of false positives, the number of avoid breaches, and the number of attempted self disclosed sensitive information.

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**Table 1
Examples of Specific Sensitive Items**

Name		X
Address		X
Telephone (cell/land)		X
Date of Birth		X
Mother's maiden name		X
Social Security Number	X	
Bio-metric (fingerprint, palm print, hand geometry, iris recognition, retina, etc.)		X
Medical information, except brief references to absences from work		X
Passport Number		X
Bank Account/Credit Card Number or Account	X	
Driver's license/state identification number		X
Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and results of background investigations		X
Criminal history		X
Any information that may stigmatize or adversely affect an individual		X

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers, including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual.

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Table 2

DLP Solutions by DOC Operating Unit

	None	RSA	Iron Port	ScanMail	Secure Zip (Google cloud solution)	Trend Micro	Websense	Axways
BEA						X		
Census			X					
NIST	X							
PTO				X				X¹

¹ Used for email messages coming and going to the internet.

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Appendix A

Related Laws, Regulations, Policies, and Documents

- Privacy Act of 1974
- U.S. Department of Commerce Office of the Chief Information Officer, Electronic Transmission of Personally Identifiable Information
- U.S. Department of Commerce Office of the Chief Information Officer, IT Privacy Policy
- Office of Management and Budget Memorandum M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information
- Office of Management and Budget Memorandum M-06-19, Reporting Incidents Involving PII
- Office of Management and Budget Memorandum M-06-16, Protection of Sensitive Agency Information
- Office of Management and Budget Memorandum M-06-15, Safeguarding PII
- Commerce CIO's Memorandum on Safeguarding PII

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Appendix B

Email Messages

Employees can potentially receive two of the three DLP email messages:

1. **Message #1 - alerts the user that his/her message, and if appropriate any attachments, have been quarantined by the DLP. This message is to be sent each day until the quarantined email is either released by the privacy office or deleted.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

A scan by the [insert name of agency] Data Loss Prevention (DLP) system has detected that your email with the subject: [subject], dated [date email was sent] may contain sensitive information that by policy is prohibited from email transmission without proper encryption. As a result, your email has been placed in quarantine for [specified] days. Please take one of the following actions to resolve this issue:

1. *Re-transmit your message using approved email encryption; or,*
2. *Contact the privacy staff on (777) 777-7777, if you think your email was quarantined by the DLP email scan in error.*

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

2. **Message #2 – is sent to the email sender who requested review by a privacy professional because a false positive is suspected, and after review, the message is released to the intended recipients.**

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EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

YOUR EMAIL MESSAGE HAS BEEN SENT

The below email has been reviewed by the [name of agency's privacy office] and released to the intended receiver(s) on [date original message released].

If you have any questions please contact the [insert privacy office's name and telephone number].

- 3. Message #3 - alerts the user that his/her email message, and any attachments, has been deleted and not sent. This message is to be sent after a quarantined message has not been acted upon after the pre-determined period of time.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

The detention period of your quarantined email message has expired and your message has been deleted. Your message was not sent to the intended recipient.

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

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Appendix C

DEFINITIONS

Business Identifiable Information (BI): consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets, and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. “Commercial” is not confined to records that reveal “basic commercial operations” but includes any records [or information] in which the submitter has a “commercial interest” and can include information submitted by a nonprofit entity. Or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C. 9).

False Positive: messages quarantined by the DLP that were later determined to not have contained any information that is prohibited from electronic transmission.

Personally Identifiable Information (PII): OMB Memorandum M-07-16 states that PII “refers to information which can be used to distinguish or trace an individual’s identity, such as name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

Sensitive But Unclassified (SBU): is a designation of information in the United States federal government that, though unclassified, often requires strict controls over its distribution. SBU is a broad category of information that includes material covered by such designations as For Official Use Only (FOUO), Law Enforcement Sensitive (LES), Sensitive Homeland Security Information, Security Sensitive Information (SSI), Critical Infrastructure Information (CII), etc. It also includes Internal Revenue Service materials like individual tax records, systems information, and enforcement procedures. Some categories of SBU information have authority in statute or regulation (e.g. SSI, CII) while others, including FOUO, do not.

Sensitive Personally Identifiable Information (SPII): Department of Commerce’s policy on Electronic Transmission of PII states that “sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother’s maiden name, but each of these elements would not be sensitive independent of one another.”

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

Sensitive Security Information (SSI): is a category of sensitive but unclassified information under the United States government's information sharing and control rules, often used by TSA and CBP. SSI is information obtained in the conduct of security activities whose public disclosure would, in the judgment of specified government agencies, harm transportation security, be an unwarranted invasion of privacy, or reveal trade secrets or privileged or confidential information.

UNCLASSIFIED/FOUO: is used for documents or products that contain material that is exempt from release under the Freedom of Information Act. It is treated as confidential, which means it cannot be discarded in the open trash, made available to the general public, or posted on an uncontrolled website. It can, however, be shared with individuals with a need to know the content, while still under the control of the individual possessing the document or product.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

UNRESOLVED ISSUES

Issue 1: Identify BII DLP requirements.

Resolution: Pending

Issue 2: How to resolve false positives of incoming email messages?

Resolution: Pending

RESOLVED ISSUES

Issue 1: Definition of a DLP breach:

Resolution: The official OMB definition of a breach is *“The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.”*

The lost of PII email incidents captured by the DLP shall not be considered breaches since the email containing the PII has never left our control.

Issue 2: Treatment of truncated IDs (SSNs, Passports numbers, credit card numbers, etc.)

Resolution: Page 2 of the Department of Commerce Policy on the Electronic Transmission of Personally Identifiable Information states the following:

“Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed.”

The treatment of truncated SSNs will be handled in accordance with the official DOC policy until such time when this requirement is rescinded by the department.

Other truncated numbers, i.e., passport numbers, credit card numbers, shall not be considered sensitive unless it is accompanied by other identifying information. (this adds to the DOC policy, since the policy does not address the use of truncated numbers other than SSN.

Issue 3: How to handle DLP incidents flagged after hours.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

Resolution: The automated email alert will immediately notify the sender that his/her email message has been quarantined. The message shall provide instructions for the sender to re-transmit the email using approved encryption software or through Accellion to successfully transmit the email. Secure FTP.

Issue 4: Treatment of incoming messages containing sensitive PII.

Resolution: The Privacy DLP Working Group recommends incoming messages be subject to DLP filtering, however, the decision to flag and quarantine incoming email messages containing sensitive PII shall be at the discretion of each operating unit.

Issue 5: Treatment of messages posted on agency's social media site

Resolution: traffic to the internet should be considered.

Issue 6: Shall we consider one DLP solution for all DOC OUs?

Resolution: No. Each operating unit must be able to employ a DLP solution that is compatible with existing technical capabilities and policies.

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800-53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800-53A to develop their own assessment procedures.

- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

GOLDSTEIN.ZACHARY.G.1228698985
ARY.G.1228698985

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DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn GOLDSTEIN.ZACHARY.G.1228698985
Date: 2016.08.30 15:28:33 -04'00'

Zachary Goldstein, NOAA CIO

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, December 5, 2016 2:46 PM
To: Lola Stith - NOAA Affiliate; Velna Bullock - NOAA Federal
Subject: Fwd: Urgent - DOC-OS-2017-000137
Attachments: 2017-000137 Amended Request - Email from Requester 11-29-2016.pdf; 2017-000137 Dept Wide 2nd Fee Estimate - Educational.docx

This would need t (b)(5) . (Sorry, guys)--

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

----- Forwarded message -----

From: **Boyd, Harriette (Federal)** <hBoyd1@doc.gov>
Date: Mon, Dec 5, 2016 at 2:42 PM
Subject: Urgent - DOC-OS-2017-000137
To: "Arnold, Josephine (Federal)" <jarnold@mbda.gov>, "Brumby, Janet W." <janet.brumby@nist.gov>, "Cheney, Stacy" <SCheney@ntia.doc.gov>, "Davis, James (Contractor)" <jdavis@doc.gov>, "Fletcher, Catherine" <catherine.fletcher@nist.gov>, "Curry, Vernon E" <vernon.e.curry@census.gov>, "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>, "Guz, Justin" <Justin.Guz@trade.gov>, "Heaton, John" <Ricou.Heaton@uspto.gov>, "Kennedy, Timothy (Contractor)" <tkennedy@doc.gov>, "Kong, Stephen (Federal)" <SKong@eda.gov>, "Kuo, Jennifer" <Jennifer.Kuo@bis.doc.gov>, "Moulder, Pamela (Federal)" <pmoulder@doc.gov>, "Oliphant, Tashima (Federal)" <TOLiphant@eda.gov>, "Parsons, Bobbie (Federal)" <bParsons@doc.gov>, "Santra, Raman" <RSantra@oig.doc.gov>, "Stith, Lola (Contractor)" <Lola.M.Stith@noaa.gov>, "Toland, Michael (Federal)" <MToland@doc.gov>, "Staunton, Dondi" <Dondi.Staunton@bea.gov>

The Department received clarification which resulted in amending the FOIA Request from Mr. John Ray. He has changed his request to : "...all e-mails sent to or received by the OIG's Legislative Affairs Officer in the past 365 days that include notification of oversight activities conducted by the Government Accountability Office." (this quote is from email to the requester from Raman Santra, OIG on Tuesday, November 15, 2016)

The emails to/from requester is attached.

Please see the Second Fee Est Request attached above and in the Case File/Correspondence/Other. I will close out the pending task on FOIAonline and replace a tasker with the one above.

(b)(5) [Redacted]

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[Redacted]

[Redacted]

I apologize for any confusion. Harriette

Sincerely

Harriette Boyd

Freedom of Information Act Specialist

U.S. Department of Commerce

Office of Privacy and Open Government

Office: [\(202\) 482-1485](tel:(202)482-1485)

Email: hboydl@doc.gov

From: [JOHN RANDALL RAY](#)
To: [Boyd, Harriette \(Federal\)](#)
Subject: Re: FOIA Request to Department of Commerce DOC-OS-2017-000137
Date: Tuesday, November 29, 2016 12:24:20 PM

Hello Ms. Boyd,

Yes, that interpretation is correct. I intend to use this data only for research purposes, specifically person background edification on the subject, and have no plans to publicize any specifics of that data in any way. I am a graduate student in the political science department at UCLA and my dissertation includes some study of the GAO, which is at the basis of my request. I have no other intended purposes for this data. Please let me know if you need anything else, and thanks for reaching out.

Best,
John

On Fri, Nov 25, 2016 at 12:37 PM, Boyd, Harriette (Federal) <hBoyd1@doc.gov> wrote:

Dear Mr. Ray, I am the contact person assigned to your FOIA request to the Department of Commerce, tracking No. DOC-OS-2017-000137. This email is to confirm the understanding of the interpretation/amendment of your request per your communication with Raman Santra, FOIA Officer, Office of the Inspector General.

It is our understanding that you have amended your request to narrow the scope of search required under your original request. The original request we received is as follows:

· Subject, to/from, and body of electronic mail containing any of the following phrases: "Government Accountability Office" "@gao.gov" "@house.gov" "@senate.gov" sent to or from the Director of Legislative and Intergovernmental Affairs in the time period January 1, 2006 to November 1, 2016.

The amended request received by DOC/OIG's Office is as follows:

· "all e-mails sent to or received by the OIG's Legislative Affairs Officer in the past 365 days that include notification of oversight activities conducted by the Government Accountability Office."

(this quote is from email to you from Raman on Tuesday, November 15, 2016 2:48 PM)

Our understanding is that you want the Department to search (from all the Bureaus -- there are 14) from their Legislative Affairs Office (or equivalent office) for emails sent to or received by Legislative Affairs Office (or equivalent) in the past 365 days that include notification of oversight activities conducted by the Government Accountability Office.

Also, Please be advised that when we received this request (DOC-OS-2017-000137) November 3, 2016 (it was submitted by you on November 2, 2016), we tasked all the Bureaus to submit a fee estimate placing you in the "Educational Category." Under this category, " (ii) Educational and Non-commercial Scientific Institution chargeable fee are Duplication (excluding the cost of the first 100 pages). Pursuant to 15 CFR 4.11(b)(4) "A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research." The following are examples of how this Sec. is interpreted:

· Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

· Example 2. A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional letterhead.

Mr. Ray I apologize for the misunderstanding and any inconvenience to you. We will appreciate your quick response so that we may proceed with this request.

Thank-You

Sincerely,

Harriette Boyd

Freedom of Information Act Specialist

U.S. Department of Commerce

Office of Privacy and Open Government

Office: [\(202\) 482-1485](tel:(202)482-1485)

Email: hboyd1@doc.gov

--

John Ray
PhD candidate, department of political science
University of California-Los Angeles
johnray@ucla.edu
213-393-3683

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Image not available for this document, ID: 0.7.3707.13414

From: [JOHN RANDALL RAY](#)
To: [Boyd, Harriette \(Federal\)](#)
Subject: Re: FOIA Request to Department of Commerce DOC-OS-2017-000137
Date: Tuesday, November 29, 2016 12:24:20 PM

Hello Ms. Boyd,

Yes, that interpretation is correct. I intend to use this data only for research purposes, specifically person background edification on the subject, and have no plans to publicize any specifics of that data in any way. I am a graduate student in the political science department at UCLA and my dissertation includes some study of the GAO, which is at the basis of my request. I have no other intended purposes for this data. Please let me know if you need anything else, and thanks for reaching out.

Best,
John

On Fri, Nov 25, 2016 at 12:37 PM, Boyd, Harriette (Federal) <hBoyd1@doc.gov> wrote:

Dear Mr. Ray, I am the contact person assigned to your FOIA request to the Department of Commerce, tracking No. DOC-OS-2017-000137. This email is to confirm the understanding of the interpretation/amendment of your request per your communication with Raman Santra, FOIA Officer, Office of the Inspector General.

It is our understanding that you have amended your request to narrow the scope of search required under your original request. The original request we received is as follows:

· Subject, to/from, and body of electronic mail containing any of the following phrases: "Government Accountability Office" "@gao.gov" "@house.gov" "@senate.gov" sent to or from the Director of Legislative and Intergovernmental Affairs in the time period January 1, 2006 to November 1, 2016.

The amended request received by DOC/OIG's Office is as follows:

· "all e-mails sent to or received by the OIG's Legislative Affairs Officer in the past 365 days that include notification of oversight activities conducted by the Government Accountability Office."

(this quote is from email to you from Raman on Tuesday, November 15, 2016 2:48 PM)

Our understanding is that you want the Department to search (from all the Bureaus -- there are 14) from their Legislative Affairs Office (or equivalent office) for emails sent to or received by Legislative Affairs Office (or equivalent) in the past 365 days that include notification of oversight activities conducted by the Government Accountability Office.

Also, Please be advised that when we received this request (DOC-OS-2017-000137) November 3, 2016 (it was submitted by you on November 2, 2016), we tasked all the Bureaus to submit a fee estimate placing you in the "Educational Category." Under this category, " (ii) Educational and Non-commercial Scientific Institution chargeable fee are Duplication (excluding the cost of the first 100 pages). Pursuant to 15 CFR 4.11(b)(4) "A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research." The following are examples of how this Sec. is interpreted:

· Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

· Example 2. A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional letterhead.

Mr. Ray I apologize for the misunderstanding and any inconvenience to you. We will appreciate your quick response so that we may proceed with this request.

Thank-You

Sincerely,

Harriette Boyd

Freedom of Information Act Specialist

U.S. Department of Commerce

Office of Privacy and Open Government

Office: [\(202\) 482-1485](tel:(202)482-1485)

Email: hboyd1@doc.gov

--

John Ray
PhD candidate, department of political science
University of California-Los Angeles
johnray@ucla.edu
213-393-3683

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Image not available for this document, ID: 0.7.3707.13415

Tracking Number	Type	Requester	Submitted	Assigned To
DOC-NOAA-2016-001760	Request	Thomas Knudson	09/14/2016	AGO
DOC-NOAA-2016-001241	Request	Shomari B. Wade	05/18/2016	AGO
DOC-NOAA-2015-001484	Request	Richard Knudsen	06/29/2015	AGO
DOC-NOAA-2015-001485	Request	Richard Knudsen	06/29/2015	AGO
DOC-NOAA-2015-001487	Request	Richard Knudsen	06/29/2015	AGO
DOC-NOAA-2016-000822	Referral	Alison Cooke	03/21/2016	NESDIS
DOC-NOAA-2016-000351	Request	Bill Marshall	10/30/2015	NESDIS
DOC-NOAA-2016-001824	Request	Lee Zurik	09/28/2016	NMFS
DOC-NOAA-2016-001759	Request	Thomas Knudson	09/14/2016	NMFS
DOC-NOAA-2016-001762	Request	Thomas Knudson	09/14/2016	NMFS
DOC-NOAA-2017-000050	Request	Marie A. Alailima	10/12/2016	NMFS
DOC-NOAA-2016-001833	Request	Margaret Townsend	09/29/2016	NMFS
DOC-NOAA-2016-001751	Request	Thomas Knudson	09/14/2016	NMFS
DOC-NOAA-2016-001763	Request	Thomas Knudson	09/14/2016	NMFS
DOC-NOAA-2016-001764	Request	Dwayne Meadows	09/15/2016	NMFS
DOC-NOAA-2016-001701	Request	Margaret Townsend	09/01/2016	NMFS
DOC-NOAA-2016-001665	Request	Eileen L. Morrison	08/24/2016	NMFS
DOC-NOAA-2016-001390	Request	Jennie Frost	07/05/2016	NMFS
DOC-NOAA-2016-001596	Request	Lee van der Voo	08/11/2016	NMFS
DOC-NOAA-2016-001560	Request	Marjorie F. Ziegler	08/03/2016	NMFS
DOC-NOAA-2016-001479	Request	Christopher Hudak	07/20/2016	NMFS
DOC-NOAA-2016-001537	Request	Emily Yehle	07/28/2016	NMFS
DOC-NOAA-2016-001453	Request	Stephen S. Schwartz	07/14/2016	NMFS
DOC-NOAA-2016-001533	Request	J W August	07/27/2016	NMFS
DOC-NOAA-2016-001270	Request	scott A. doyle	06/08/2016	NMFS
DOC-NOAA-2016-001245	Request	Thomas Knudson	06/03/2016	NMFS
DOC-NOAA-2016-001326	Request	Thomas Knudson	06/21/2016	NMFS
DOC-NOAA-2016-001214	Request	bruce weyhrauch	05/27/2016	NMFS
DOC-NOAA-2016-001215	Request	Cassie Burdyslaw	05/27/2016	NMFS
DOC-NOAA-2016-001299	Request	Thomas Knudson	06/15/2016	NMFS
DOC-NOAA-2016-001080	Request	Jeff Ruch	04/29/2016	NMFS
DOC-NOAA-2016-001186	Request	Patricia Weisselberg	05/20/2016	NMFS
DOC-NOAA-2016-001168	Request	Thomas Knudson	05/17/2016	NMFS
DOC-NOAA-2016-001053	Request	Thomas Knudson	04/26/2016	NMFS
DOC-NOAA-2016-000959	Request	Office Administrator	04/12/2016	NMFS
DOC-NOAA-2016-000423	Request	Ryan P. Mulvey	12/21/2015	NMFS
DOC-NOAA-2016-000807	Request	Basil Scott	03/16/2016	NMFS
DOC-NOAA-2015-001860	Request	Delcianna Winders	09/04/2015	NMFS
DOC-NOAA-2016-000775	Request	Jason Domark	03/08/2016	NMFS
DOC-NOAA-2016-000603	Request	Margaret Townsend	02/10/2016	NMFS
DOC-NOAA-2016-000604	Request	Margaret Townsend	02/10/2016	NMFS
DOC-NOAA-2015-001898	Request	Emily Posner	09/10/2015	NMFS
DOC-NOAA-2016-000439	Request	Alan Stein	01/10/2016	NMFS
DOC-NOAA-2016-000094	Request	Josh Schopf	10/14/2015	NMFS
DOC-NOAA-2015-000295	Request	Office Administrator	11/21/2014	NMFS
DOC-NOAA-2015-000190	Request	Miyo Sakashita	11/02/2014	NMFS
DOC-NOAA-2013-000567	Request	Doug Karpa	02/15/2013	NMFS
DOC-NOAA-2017-000033	Request	Sylvia Costelloe	10/07/2016	NOAA FOIA
DOC-NOAA-2016-001786	Request	Ana Gutierrez	09/20/2016	NOAA FOIA
DOC-NOAA-2016-001775	Request	Ehsan Naranji	09/19/2016	NOAA FOIA
DOC-NOAA-2016-001743	Request	John Greenewald	09/12/2016	NOAA FOIA

DOC-NOAA-2017-000063	Request Giovanni j. Galarza	10/13/2016	NOS
DOC-NOAA-2017-000111	Request Lara Kolinchak	10/13/2016	NOS
DOC-NOAA-2016-001795	Request Michael L. Brown	09/22/2016	NOS
DOC-NOAA-2016-001599	Request Machel R. Hall	08/12/2016	NOS
DOC-NOAA-2016-001675	Request Jeffrey T. Smith	08/26/2016	NOS
DOC-NOAA-2016-001531	Request Stacy Hernandez	07/27/2016	NOS
DOC-NOAA-2016-001319	Request Michelle Burt	06/20/2016	NOS
DOC-NOAA-2016-000192	Request John Ferro	11/03/2015	NOS
DOC-NOAA-2015-000706	Request Megan R. Wilson	02/18/2015	NOS
DOC-NOAA-2017-000062	Request Elizabeth Nowicki	10/13/2016	NWS
DOC-NOAA-2016-001808	Request Josh Boon	09/24/2016	NWS
DOC-NOAA-2016-001816	Request Ben Briscoe	09/20/2016	NWS
DOC-NOAA-2016-001403	Request Ivria Fried	07/07/2016	NWS
DOC-NOAA-2017-000058	Request Christopher T. Clack	10/13/2016	OAR
DOC-NOAA-2015-000905	Request Alan David	03/14/2015	OAR
DOC-NOAA-2016-001082	Request Cameron Cole	04/25/2016	OGC
DOC-NOAA-2017-000018	Request Steven McIntosh	10/05/2016	WFMO
DOC-NOAA-2016-001472	Request A. Marques Pitre	07/20/2016	WFMO
DOC-NOAA-2016-001346	Request Tammy Murphy	06/10/2016	WFMO
DOC-NOAA-2016-001240	Request David Novak	05/19/2016	WFMO
DOC-NOAA-2016-001094	Request Anthony Arguez	05/02/2016	WFMO
DOC-NOAA-2016-001043	Request Steven McIntosh	04/24/2016	WFMO
DOC-NOAA-2016-000444	Request Nelsie A. Ramos	01/12/2016	WFMO

Due	Days Backlogged
10/28/2016	22
06/30/2016	105
08/11/2015	328
08/11/2015	328
07/31/2015	335
10/31/2016	136
12/15/2015	242
12/08/2016	3
11/14/2016	12
11/10/2016	13
11/09/2016	14
11/08/2016	15
10/28/2016	22
10/27/2016	23
10/27/2016	23
10/03/2016	32
10/13/2016	33
10/14/2016	42
09/29/2016	42
09/26/2016	44
09/22/2016	47
09/13/2016	54
08/30/2016	63
08/29/2016	64
08/03/2016	82
08/02/2016	83
07/26/2016	88
11/30/2016	91
07/20/2016	92
07/20/2016	92
06/08/2016	102
08/12/2016	102
06/22/2016	111
06/10/2016	117
05/25/2016	123
02/04/2016	124
05/04/2016	132
10/23/2015	136
04/06/2016	140
03/15/2016	174
03/15/2016	176
10/27/2015	180
02/24/2016	183
02/18/2016	208
12/24/2014	478
12/05/2014	491
04/12/2013	901
11/09/2016	14
11/02/2016	19
11/01/2016	20
10/13/2016	33

11/28/2016	3
11/25/2016	4
11/04/2016	17
09/29/2016	18
10/11/2016	35
08/29/2016	64
07/20/2016	92
12/04/2015	249
10/13/2015	429
11/10/2016	13
11/08/2016	15
10/27/2016	23
08/12/2016	75
11/25/2016	1
04/17/2015	408
06/03/2016	123
11/09/2016	14
08/31/2016	62
07/25/2016	89
07/01/2016	104
06/15/2016	116
06/02/2016	124
02/17/2016	199

Tracking Number	Type	Requester	Requester Organization
DOC-NOAA-2017-000112	Request	Rose Santos	FOIA GROUP INC
DOC-NOAA-2016-001810	Request	Deborah E. Baker	Glacier Water District
DOC-NOAA-2016-001703	Request	Trevor T. Davis	Hydra Offshore Construction, Inc.
DOC-NOAA-2016-001656	Request	Kellea Landeene	
DOC-NOAA-2017-000055	Request	Nicholas Lewis	
DOC-NOAA-2016-000339	Request	George Hanna	
DOC-NOAA-2016-000226	Request	Jacob Bojesson	The Daily Caller News Foundation
DOC-NOAA-2017-000168	Request	MICHAEL PEPSON	Cause of Action
DOC-NOAA-2017-000057	Request	Darlene P. Bennett	Sustainable Fisheries
DOC-NOAA-2017-000023	Request	Nina Bell	Northwest Environmental Advocates
DOC-NOAA-2017-000006	Request	Lee van der Voo	InvestigateWest
DOC-NOAA-2016-001822	Request	Isabella Clegg	
DOC-NOAA-2016-001802	Request	Evan D. Johns	Appalachian Mountain Advocates
DOC-NOAA-2016-001793	Request	Sophie Cocke	Honolulu Star-Advertiser
DOC-NOAA-2016-001826	Request	Courtney S. Vail	Animal Welfare Institute
DOC-NOAA-2016-001716	Request	Alexis Thomas	
DOC-NOAA-2016-001603	Request	Jim Weber	Northwest Indian Fisheries Commission
DOC-NOAA-2016-001521	Request	Christine Haughney	Zero Point Zero Production
DOC-NOAA-2016-001419	Request	James J. Tutchton	Defenders of Wildlife
DOC-NOAA-2016-001321	Request	Brendan Borrell	Hakai Magazine
DOC-NOAA-2016-001194	Request	Elizabeth A. Mitchell	Association for Professional Observers
DOC-NOAA-2016-001182	Request	Patricia Weisselberg	Law Office of Patricia Weisselberg
DOC-NOAA-2016-001212	Request	Douglas A. Ruley	Davis & Whitlock, P.C.
DOC-NOAA-2016-000967	Request	Office Administrator	Friends of Animals
DOC-NOAA-2016-000605	Request	Margaret Townsend	
DOC-NOAA-2015-001376	Request	Marc R. Greenberg	Musick, Peeler & Garrett LLP
DOC-NOAA-2017-000156	Request	David I. Katzman	
DOC-NOAA-2017-000052	Request	Jane Reifert	Incredible Adventures / IA Worldwide, Inc.
DOC-NOAA-2016-001697	Request	Imre Berty	Leidos, Inc.
DOC-NOAA-2016-001230	Request	Sam Cohen	SANTA YNEZ BAND OF CHUMASH INDIA
DOC-NOAA-2016-000794	Request	David C. Weber	Riddell Williams P.S.
DOC-NOAA-2016-000789	Request	Jay Willis	Riddell Williams P.S.
DOC-NOAA-2017-000072	Request	Richard Hirn	National Weather Service Employees
DOC-NOAA-2016-001765	Request	Elizabeth A. Mitchell	Association for Professional Observers
DOC-NOAA-2016-001747	Request	Daniel Britton	
DOC-NOAA-2017-000096	Request	Elizabeth Groeller	

Submitted	Assigned To	Case File Assigned To	Perfected?	Due	Closed Date	Status
10/27/2016	AGO	Dalton Cummings	Yes	12/02/2016	11/23/2016	Closed
09/24/2016	AGO	Dalton Cummings	Yes	11/08/2016	11/03/2016	Closed
08/29/2016	AGO	Shem Yusuf	Yes	10/03/2016	11/03/2016	Closed
08/09/2016	CAO	Mary Ann Whitmeyer	Yes	10/06/2016	11/17/2016	Closed
10/12/2016	NESDIS	Maria S. Williams	Yes	11/28/2016	11/21/2016	Closed
12/11/2015	NESDIS	Maria S. Williams	Yes	01/15/2016	11/21/2016	Closed
11/12/2015	NESDIS	Maria S. Williams	Yes	12/16/2015	11/21/2016	Closed
11/09/2016	NMFS	Samuel B. Dixon	Yes	12/20/2016	11/29/2016	Closed
10/13/2016	NMFS	Samuel B. Dixon	Yes	11/28/2016	11/16/2016	Closed
10/06/2016	NMFS	Ana Liza Malabanan	Yes	12/02/2016	11/22/2016	Closed
10/03/2016	NMFS	Arlyn E. Penaranda	Yes	11/23/2016	11/28/2016	Closed
09/28/2016	NMFS	Jerenda Burroughs	Yes	11/08/2016	11/14/2016	Closed
09/22/2016	NMFS	Amanda J. Patterson	Yes	11/07/2016	11/08/2016	Closed
09/21/2016	NMFS	Kehaupuaokal Kamaka	Yes	11/03/2016	11/03/2016	Closed
09/20/2016	NMFS	Tawand Hodge Tonic	Yes	10/28/2016	11/03/2016	Closed
09/06/2016	NMFS	Lamar Turner	Yes	10/13/2016	11/15/2016	Closed
08/12/2016	NMFS	Laurie Mukai	Yes	11/04/2016	11/08/2016	Closed
07/26/2016	NMFS	Arlyn E. Penaranda	Yes	09/30/2016	11/15/2016	Closed
07/11/2016	NMFS	Tawand Hodge Tonic	Yes	08/12/2016	11/22/2016	Closed
05/26/2016	NMFS	Lorna D. Martin Gross	Yes	07/25/2016	11/17/2016	Closed
05/23/2016	NMFS	Jennifer Pralgo	Yes	06/24/2016	11/08/2016	Closed
05/19/2016	NMFS	Ana Liza Malabanan	Yes	11/10/2016	11/07/2016	Closed
05/19/2016	NMFS	Beverly J. Smith	Yes	06/24/2016	11/30/2016	Closed
04/13/2016	NMFS	Lamar Turner	Yes	05/16/2016	11/15/2016	Closed
02/10/2016	NMFS	Lamar Turner	Yes	03/15/2016	11/17/2016	Closed
06/08/2015	NMFS	Arlyn E. Penaranda	Yes	07/14/2015	11/23/2016	Closed
11/09/2016	NOAA FOIA	Lola Stith	Yes	12/20/2016	11/21/2016	Closed
10/12/2016	NOS	Nkolika Ndubisi	Yes	11/09/2016	11/08/2016	Closed
08/22/2016	NOS	Nkolika Ndubisi	Yes	09/30/2016	11/07/2016	Closed
05/16/2016	NOS	Nkolika Ndubisi	Yes	06/28/2016	11/03/2016	Closed
03/11/2016	NOS	Nkolika Ndubisi	Yes	04/12/2016	11/15/2016	Closed
03/02/2016	NOS	Nkolika Ndubisi	Yes	04/11/2016	11/15/2016	Closed
10/17/2016	NWS	Beverly Hernandez	Yes	11/15/2016	11/02/2016	Closed
09/15/2016	OGC	Susan S. Beresford	Yes	11/14/2016	11/21/2016	Closed
09/13/2016	OGC	Susan S. Beresford	Yes	10/13/2016	11/04/2016	Closed
10/24/2016	WFMO	Karen Robin	Yes	12/02/2016	11/03/2016	Closed

Dispositions

Full denial based on exemptions
Full grant
Partial grant/partial denial
Partial grant/partial denial
Full grant
Partial grant/partial denial
Partial grant/partial denial
Other - Aggregate cases
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Full grant
Request withdrawn
Full grant
Full grant
Other - Admin close - no response from requester
Request withdrawn
Partial grant/partial denial
Other - Publicly available information
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Other - Publicly available information
Full grant
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Full grant
Partial grant/partial denial
Full grant
Request withdrawn

Detail

[Reference FGI# 16- 50885] Relevant to DOCEA133E08CQ0020 we seek a copy of the proposal submitted by inc Copy of Award NA16NMF4380092 to Lummi Indian Business Council 7-13-2016. Seen on USASpending.gov Give I would like to respectfully request the following information under the FOIA. We are happy to cover any cost assoc Please send a copy of the current lease on the National Weather Service Forecast Office(WFO),5027 Miller Trunk To whom it may concern, My name is Nic, I'm an engineering student at Cal Poly San Luis Obispo. I'm currently w All communications by Thomas R. Karl related to the paper published under the title Possible artifacts of data bias Any and all emails containing the words "hiatus", "pause", "denier" and "sk We are seeking to better understand the process leading to the President's issuance of Proclamation 9496 of Sept Under the Freedom of Information Act, 5 U.S.C. § 552, I am requesting 1 copy of the Report of the inquiry/in Please provide all documents regarding ESA §7 consultation (including formal, informal, and national) between NM I would like a copy of the investigative case file and any enforcement proceedings associated with the case in which I would like the number of Bottlenose dolphins (*Tursiops truncatus*) held in public display facilities in North America Please provide the following documents: (1) any documents indicating the National Marine Fisheries Service's con Edited Description 10/5/16: Please provide me with a list of the Hawaii longline fishing permit transfers executed o I am writing to request the following information under, and pursuant to, the Freedom of Information Act (FOIA), an I am requesting all Marine Mammal Inventory reports for pinnipeds and cetaceans Sea Life Park Hawaii dating bac Please provide all documents, both electronic and paper, including notes of conversations, discussing input and/or See updated request (see below PDF of scope clarification) from requester. OLE no longer utilizes the OIR form a FOIA request for records relating to National Marine Fisheries Service's 12-Month Findings on Petitions to List the Pursuant to my rights under the Freedom of Information Act (5 U.S.C. 552), I ask to obtain either an electronic or h I am requesting copies of all communications (e-mails, faxes and their associated photographs and attachments) s 1. Any and all of "Your" internal "documents", and any and all "documents" You sent to or received from the "Corps' Biological Assessment Aguirre Offshore GasPort Projiect. In February 2016, Aguirre Offshore Gasport, LLC submit Please see the attached Freedom of Information Act request submitted by Friends of Animals.: MODIFIED AS FO Significant Portion of Range Policy 1. All records related to the Joint Policy on Interpretation of the Phrase "Signific 9/27/2016-Coordinator made a mistake with the date of Part #5 of the request. Date of correspondences need is fr Request for Certified Blue Ribbon Copies of Meteorological Records To Whom It May Concern: We request certifi I would like to go ahead and request a copy of the decision memo under the Freedom of Information Act. We've re Pursuant to the Freedom of Information Act, please provide me the list of email addresses to which this notice (Err 1. All documents as to any meetings between NOAA and the Tribe as to the CHNMS through any representatives) This request pertains to National Oceanic and Atmospheric Administration ("NOAA") records related to the Lower I This request pertains to National Oceanic and Atmospheric Administration ("NOAA") records related to the Lower I Request a copy of any document which reveals the amount of unobligated or "carry over" appropriated "I have a copy of the Environmental Protection Agency's Administrative Law Judge's Initial Decision and Order for This concerns a Bluefin Tuna fishing quota violation which occurred on August 15, 1982 out of Gloucester, Massac I request all documentation (agency forms, copies of emails, etc.) relating to my voluntary resignation/separation o

umbent DIVERSIFIED GLOBAL PARTNERS

in that NMF is shown in the award number, this may be National Marine Fisheries Service. I'd also like to be associated with this request. Please send copies of all Basic Ordering Agreements issued or denied under contract number 15-16-00001 Highway, Duluth, MN 55811 phone 218-729-6697 showing the current rent that is being paid and what is being working with other engineering students on a theoretical design for a search and rescue satellite constellation as in the recent global surface warming hiatus.

epic" sent from "thomas.r.karl@noaa.gov", to the following email accounts: "trent.karl@noaa.gov" on September 15, 2016, 81 Fed. Reg. 65,161 (Sept. 21, 2016), which established the Northeast Canyons and Seamounts Protection and Restoration Act (NECARA) investigation conducted by Mr. Kirk Essmyer at the direction of Mr. Paul Doremus regarding reported allegations against the U.S. Fish and Wildlife Service (FWS) and the EPA as they relate to the following amendments to California's water quality standards: 1. Amendment 1 to the "Spanish company Albacora S.A., owner of the Albacora Uno, was charged June 2, 2010 with 67 violations of the Marine Mammal Inventory Report data.

concurrent in, non-concurrent in, or otherwise response to the April 2016 Biological Assessment by the U.S. Fish and Wildlife Service (FWS) over the past year, beginning September 1, 2015 to present - including the name of the person or company responsible for the violation and all other laws entitling full public disclosure of the following information for the timeframes beginning January 1, 2015 to their opening in 1964. I am requesting all necropsy reports for cetaceans and pinnipeds of Sea Life Conservation Fund (SLCF) recommendations provided by the Northwest Fisheries Science Center over the last 18 months to the U.S. Fish and Wildlife Service (FWS) and retention schedule for these are 7 years. Requester requested for similar documentation: data sheet for the Common Thresher Shark and Bigeye Thresher Shark as Threatened or Endangered under the Endangered Species Act (ESA) and a hard copy of the following documents, which I understand to be held by the NOAA Office of General Counsel (OGC) sent by Keith Davis, a US fisheries observer, to any US government employee and/or US government contractor (GC), "CDFW", "SWRB", "YCWA", "DWR", "FWS", Congressional offices and/or any other third parties "related to the Biological Assessment of the Gasport Project to the Federal Energy Regulatory Commission (FERC) and the U.S. Fish and Wildlife Service (FWS)-- We would like everything from the date our petition was received (August 26, 2014) to the present. Requester requested a hard copy of the "Important Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" from January 2012- June 15, 2015. Request Clarification 5/3/2016- Item #5- Requester stated that he is requesting blue ribbon copies of all meteorological records, including surface weather observations, radiosonde observations, and aircraft - EPCRA/TierII data standard - development version) was sent. Please provide the list in a spreadsheet format. 2. All documents as to any and all efforts by NOAA to consult with federally recognized tribes: Duwamish Waterway and East and West Waterways of Harbor Island (collectively, the "Site") in Seattle, Washington; Duwamish Waterway and East and West Waterways of Harbor Island (collectively, the "Site") in Seattle, Washington; and funds for the National Weather Service for fiscal year 2016, per PPA

NOAA Enforcement Case PI1401544 involving the harassment of a fisheries observer during his assignment in Massachusetts. The person violating the quota was James R. Britton, Sr. The matter went before an Administrative Law Judge (ALJ) on September 22, 2016, including the dates of September 22 to the current date, 2016 and also include,

[REDACTED]

to obtain a list of all water and fish related grants for at least ten years.
Contract number EA-133-16-BR-0004 Please send copies of all Basic Ordering Agreements issued or derived
it covers as well as the term.
tion. I had the idea of possibly utilizing pre-existing infrastructure for system control and data recovery fr

bert@ucar.edu "Gavin.A.Schmidt@nasa.gov", "kathryn.sullivan@noaa.gov" and
Seamounts Marine National Monument. CoA Institute hereby requests access to the following records fo
ations that Mrs. Emily Menashes changed Federal Employee: Darlene Bennett's NRAP Detail SF-52 per
ment to the Water Quality Control Plan, Los Angeles Region for the coastal watersheds of Los Ang
counts of fishing inside the U.S. Exclusive Economic Zone (EEZ) in the western and central Pacific Oce

J.S. Nuclear Regulatory Commission regarding the North Anna Power Station Combined License Applic
ny who holds the original permit and the person or entity to which the permit was transferred/leased. Ple
uly 1, 2016 and ending September 20, 2016: 1). All documentation (electronic or otherwise) relating to th
Park dating back to their opening in 1964.

Following NMFS staff: Matthew Longenbaugh, Jeff Fisher, and Scott Anderson (in the Oregon Washingto
or EARs related to Carlos Rafael and/or his companies (provided list of companies and vessels). Reque
ered Species Act, 81 Fed. Reg. 18980 (April 1, 2016). Please provide all records in your possession or c
nsel and the Office of Law Enforcement and relate to the various vessels of Carlos Rafael from North D
Contractor, and their responses to him, from August 1, 2015 to September 10, 2015.

ited to" the Yuba Salmon Partnership Initiative ("YSPI"); 2. Any "documents" "related to" assessments dc
ot;FERC"; to the National Oceanic and Atmospheric Administration ("NOAA") and to the Fis
date the FOIA request was received (4/13/16). However, if there is additional information that predates
reatened Species." 79 Fed. Reg. 37,578 (July 1, 2014); 76 Fed. Reg. 76,987 (Dec. 9, 2011). 2. All recor
interested in documents that are critical of NOAA's efforts to seek forfeiture for its own benefit, i.e., that
e data, sequence reports, surface analysis charts, air surface charts, winds aloft and upper-air observati
l for shark disturbance. As a reminder, we have proposed using attractants just 7 total dates this season
eet or table format.

as to CHNMS pursuant to Presidential Executive Order 13175 Consultation and Coordination With India
Washington. On behalf of Longview Fibre Paper and Packaging, Inc., doing business as KapStone Cor
Washington. 1. All agency records related to the apparent conclusion by the Elliott Bay Trustee Council

ment on board the fishing vessel LADY LUCK from March 31, 2014 to May 11, 2014. What I am reques
ative Law Judge of the U. S. Dept. of Commerce on July 29, 1983. The Judge imposed a civil fine of \$1!
but not be limited to, forms, emails and other documentation generated by Cynthia Burley, Branch Chief

[REDACTED]

ied under contract number EA-133-16-BR-0005 In short above, we are looking for all Basic Ordering Ag
om our satellite system and after a bit of searching discovered that the COSPAS SARSAT system has 3

ot;, "Anthony.Arguez@noaa.gov";, "Boying.Huang@noaa.gov";, "jay.lawrimc
r the time period of January 1, 2012, to the present: 1. All records or communications (including emails
formed grade levels and uploaded a clean copy of fraudulent & CIO Violation file to the Recruitmer
jeles and Ventura Counties which updated the ammonia water quality objectives and implementation pr
an without a valid U.S permit over two years. The Notice of Violation and Assessment, known as a NOV

ation, NRC Docket No. 52-017; (2) any biological opinion issued in response to the April 2016 Biologica
ase include the name of the vessel and the date of transfer. (This request refers to Hawaii longline fishin
re notice of transfer of dolphins to Dolphinaris, a swim-with-the-dolphin interactive facility owned by Ven

n Coastal Office in Lacey, Washington, regarding the effects of shellfish aquaculture activities on eelgra
ester also provided specifics cases she would like to get documentation on: cases against vessels Dinal
ontrol that NMFS considered in making either, its initial positive 90-day findings on the Petitions (80 Fed
armouth, Massachusetts. List of 29 NOVAs issued to Carlos Rafael's various vessels between 1989 an

ne since February 29, 2012 of the feasibility of fishery habitat restoration and enhancement actions on t
sh and Wildlife Service ("FWS"). Dialogo requests allrecords within your possession or under your
our petition and was considered in the 90-day or 12-month findings for the common thresher shark or bi
ds related to, concerning, and/or generated by or in connection with the Significant Portion of Range Te
NOAA has a conflict in that it is obtaining forfeiture of funds that go directly toNOAA's own bottom line b
ons, Convective SIGMET 59C, Severe Weather Forecast Alert number 686, and any and all related info
1, 12 total dates next year and no more than 20 total dates the following year, insuring a less-than-signifi

n Tribal Governments? 3. All documents as to any and all efforts by NOA to consult with federally recog
itainer Corporation {"KapStone"}, we request copies of the following agency records: L. All agency recor
(the "Trustees") that J.A. Jack & Sons "may be a potentially liable party that has contributed to the

ting is: A copy of the hearing transcript; A copy of the Respondents' and the Agency's exhibits; and A co
50,000. "In the matter of James Britton No. 244-139, 244-149 (July 29, 1983). I would like a copy o
, Mission Support, and Paul Pegnato, Deputy Chief Administrative Officer, NESDIS, SMC Building 1 in S

reements issued as a result of the attached solicitations. Please send copies of all Task Orders / Contr

31 MCC's that they utilize. I was wondering if you could provide a rough estimate of the data rates the C

re@noaa.gov", "matthew.menne@noaa.gov", "thomas.peterson@noaa.gov" (from governmental and nongovernmental accounts, text messages, and emails) referring or relating to the RADs Analysis Database (RADs). I am a current FTE employee of the Department of Commerce/NOAA/National Procedures for inland surface waters, enclosed bays, and estuaries which are characteristic of freshwater A, included a possible \$7.4 million civil penalty" which Albacora SA settled for \$5 million to go into the W

I Assessment by the Nuclear Regulatory Commission regarding the North Anna Power Station Combining permits issued and overseen by NOAA/NMFS.) Also, please provide me with a list of all companies near Scottsdale, Arizona at, or near the address of 9500 E. Via de Ventura on Salt R

iss and/or submerged aquatic vegetation in Puget Sound and along the Washington coast. If documents Jane and the VillaNova de Corvo

I. Reg. 11379 (Common) and 80 Fed. Reg. 48061 (Bigeye)) or its subsequent negative 12-month finding 2006. Copies of any NOVAs and Settlement Agreements issued to Carlos Rafael's various vessels be

the Yuba River; 3. Any "documents" "related to" assessments done by or for NMFS or provided to NMFS control that concern or relate to this Biological Assessment and consultation regarding that Biological Assessment thresher shark, we would also like a copy of that information. Please let me know if you have any committee consisting of representatives from the U.S. Fish and Wildlife Service and NOAA Fisheries.

udget. Request Clarification 4/18/16 - Item #5 -After further clarification with the requester on what information and documents, for the date of 4/4/16 pertaining to Pigeon Forge TN. impact on sharks, while increasing the potential for educational sightings.

nized tribes as to CHNMS pursuant to that Nov. 5, 2009, Presidential Memorandum reaffirming EO 13176 related to the apparent conclusion by the Elliott Bay Trustee Council (the "Trustees") that KapStone "release of hazardous substances that have injured natural resources" at the Site (the "Trustees' Conclu

py of Respondents' and Agency's post-hearing briefs and related reply briefs." of the decision and any satisfaction of judgement or current status of the case. Silver Spring, MD 29010 and their Branch and Division employees as assigned.

acts awarded or issued to Contractor "Fishing Vessel North Wind" who DUNS # is 188936959 issued by

DSPAS SARSAT system's LEOLUTs and GEOLUTs typically can handle? Also, do your MCC's have ca

ot;, "russell.vose@noaa.gov", and "huai-min.zhang@noaa.gov"

use of the Antiquities Act to create a national monument in the Atlantic Ocean.

tional Marine Fisheries Service/Office of Sustainable Fisheries employee. The dates of the investigation and support aquatic life, adopted by the Los Angeles Regional Water Quality Control Board on April 25, Western Pacific Sustainable Fisheries Fund.

ed License Application, NRC Docket No. 52-017; and (3) any other documents arising from formal or info; and individuals that hold Hawaii longline fishing permits administered by NOAA/NMFS. I'm seeking the river Pima Maricopa Community Land at the loop 101 and Via de Ventura juncture, including any docum

s, including scientific studies, were provided by the NW Fisheries Science Center to the above-mentione

js (81 Fed. Reg. 18980). This request includes any documents, writings, materials, correspondence, em between 2006 and the present. Offense investigation report related to potential criminal violations by Carl

; of the extent of introgression of spring Chinook on the Yuba River with hatchery stock salmon [note: ple sassessment and the Aguirre Offshore Gasport plll'SWlllt to the Endangered Species Act ("ESA")r. I other questions.

rmation he is requesting for exactly, he stated that he is interested in any correspondence from member

75? 4. All documents as to any and all efforts by NOA to consult with federally recognized tribes as to Cl may be a potentially liable party that has contributed to the release of hazardous substances that have ir sion"). See NOAA Letter to Sharon Jack (January 29, 2016), attached as Attachment A. This request in

NOAA in the past 16 months.

pability for system control such as satellite attitude adjustment?

start or completion are unknown. If there are any fees for searching or copying the records, please let n
2002 (Regional Board Resolution No. 2002-011), as corrected by the Regional Board Executive Officer

ormal consultation with the Nuclear Regulatory Commission and/or the Army Corps of Engineers concer
names and companies of the original holders of the permits - not the entities to whom these permit hold
entation regarding the review, permitting, or licensing of said facility.

d staff, please provide those as well.

ails, files, photos, maps or reports generated, received, relied upon, related to or discussing these agen
s Rafael that occurred between 1996 and 1999.

ase consider this request to only ask for documents generated after February 29, 2012]; 4. Any "docum
ailogo specifically requests any and all correspondence, e-mails, memoranda, notes or other records th

s of Congress or other branches of government related to "All documents and correspondence that con

-NMS pursuant to NOAA Procedures for Government-to-Government Consultation With Federally Recc
jured natural resources" at the Site (the "Trustees' Conclusion". See NOAA Letter to Roger Stone (Janu
cludes all agency records containing the facts, considerations, reasons, reasoning, and conclusions that

[REDACTED]

to know before you fill my request. [Or, please supply the records without informing me of the cost if the records are in a memorandum dated February 4, 2003. 2. Amendment to the Water Quality Control Plan, Los Angeles

concerning the North Anna Power Station Combined License Application, NRC Docket No. 52-017. 3. Permits that licensees may have leased their permits to. Please include the date that NOAA/NMFS issued each original permit

regulatory actions. In your response please provide any records substantiating any personal communications received

regarding "related to" assessments done by or for NMFS or provided to NMFS of the impacts of Daguerre Point on the river that concern or related to this Biological Assessment and related consultation pursuant to the ESA.

concern or relate to criticism of NOAA, in particular with respect to seizures and forfeitures by NOAA and handling of

recognized Indian Tribes and Alaska Native Corporations? 5. Copies of all Native American consultation reports received on or after January 29, 2016, attached as Attachment A. This request includes all agency records containing the facts, information, and data that were considered in making and/or that support the Trustees' Conclusion; records that refer to or relate

[redacted]

fees do not exceed \$20.00, which I agree to pay.] If you deny all or any part of this request, please cite the 3rd Region for the coastal watersheds of Los Angeles and Ventura Counties which updates ammonia wa

permit and the name of the fishing vessel, if available. Please provide me with a list of all Hawaii longline f

referenced in the 12-month finding or status review including, but not limited to, those of "Clarke, 2015" (re

oint Dam on spring Chinook, steelhead or green sturgeon in the Yuba River, including but not limited to

ow NOAA spends forfeited funds" from 2013-present. All records relating to administrative forfeitures l

olicies for NOAA? 6. Copies of all meetings between NOAA and the Northern Chumash Tribal Council including considerations, reasons, reasoning, and conclusions that were considered in making and/or that support in any way to the Trustees' Conclusion; and records that refer to or relate to NOAA's consideration of al

[REDACTED]

each specific exemption you think justifies your withholding of information. Notify me of applicable water quality objectives and implementation procedures applicable to inland surface waters not characterized

as fishing permits that have been sold, including the name of the original permit

as referenced at 81 Fed. Reg. 18991, 19006). In addition, in your response please provide

that impeding fish migration and promoting predation [note: please consider this request to only a

copy of NOAA from 2011 to 2015 of good or funds valued at over \$10,

including the name of each member of such Council, the date and location? 7. Copies of all meetings between the Trustees' Conclusion; records that refer to or relate in any way to the Trustees' Conclusions or alternatives to the Trustees' Conclusion. 2. All agency records reflecting or related

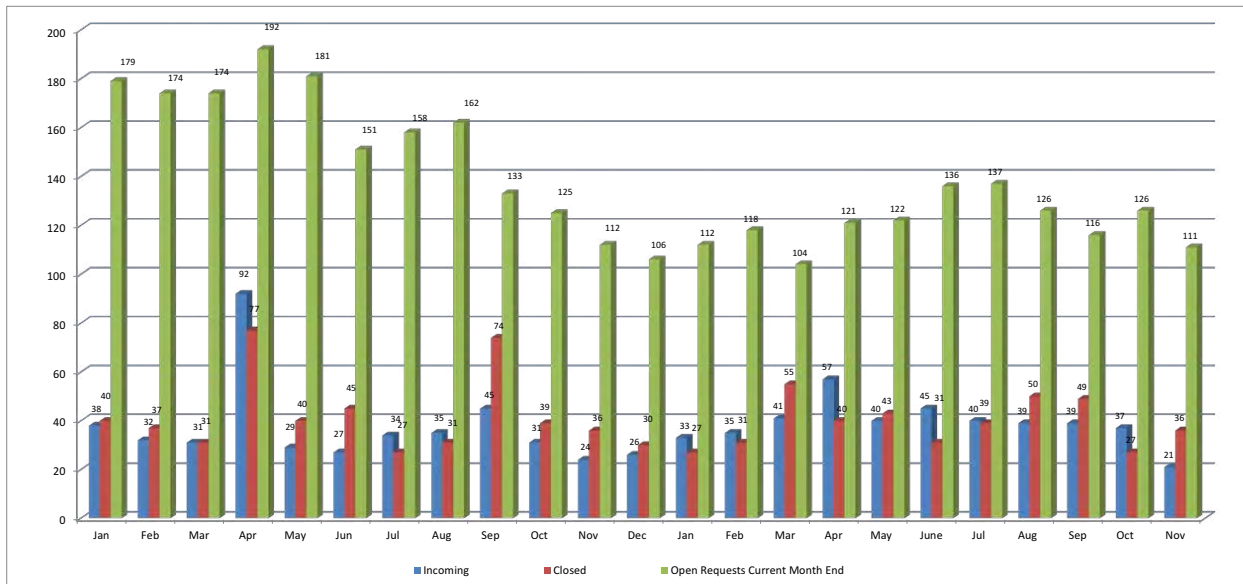


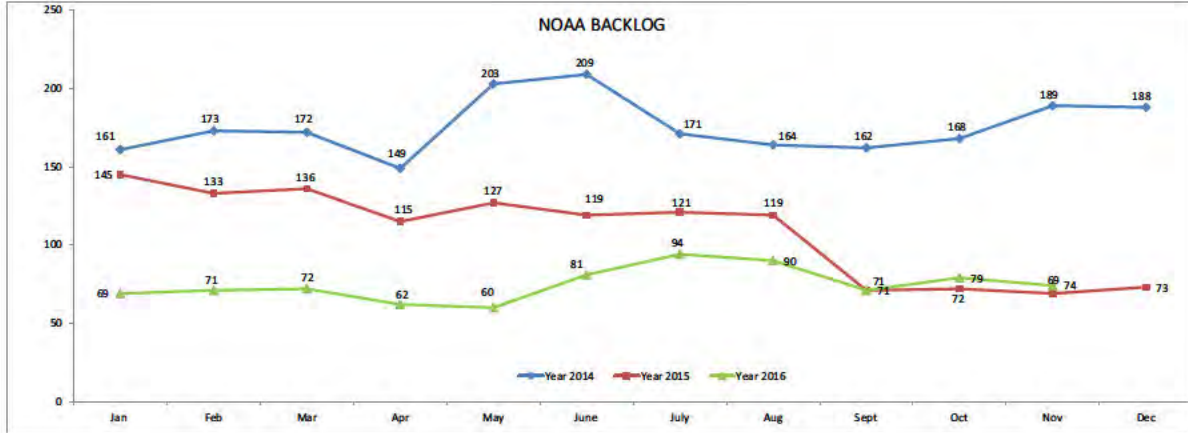
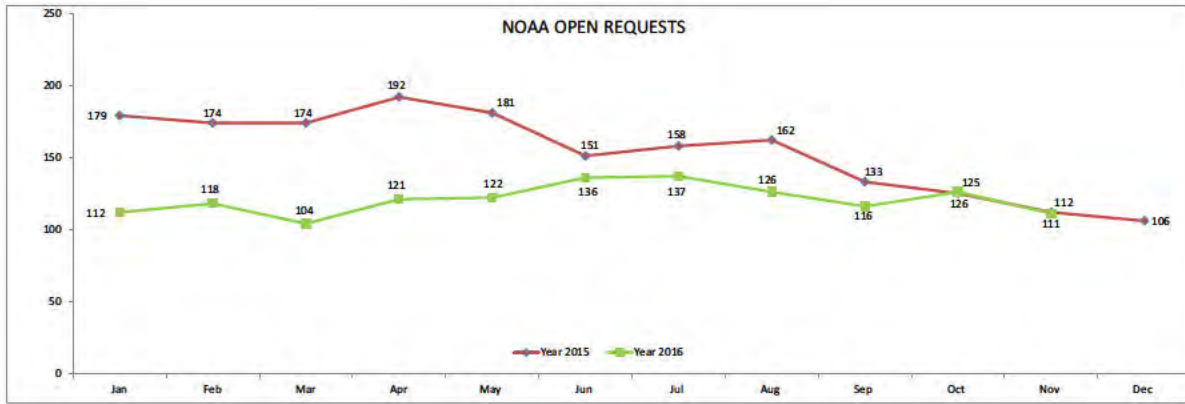
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veen NOAA an

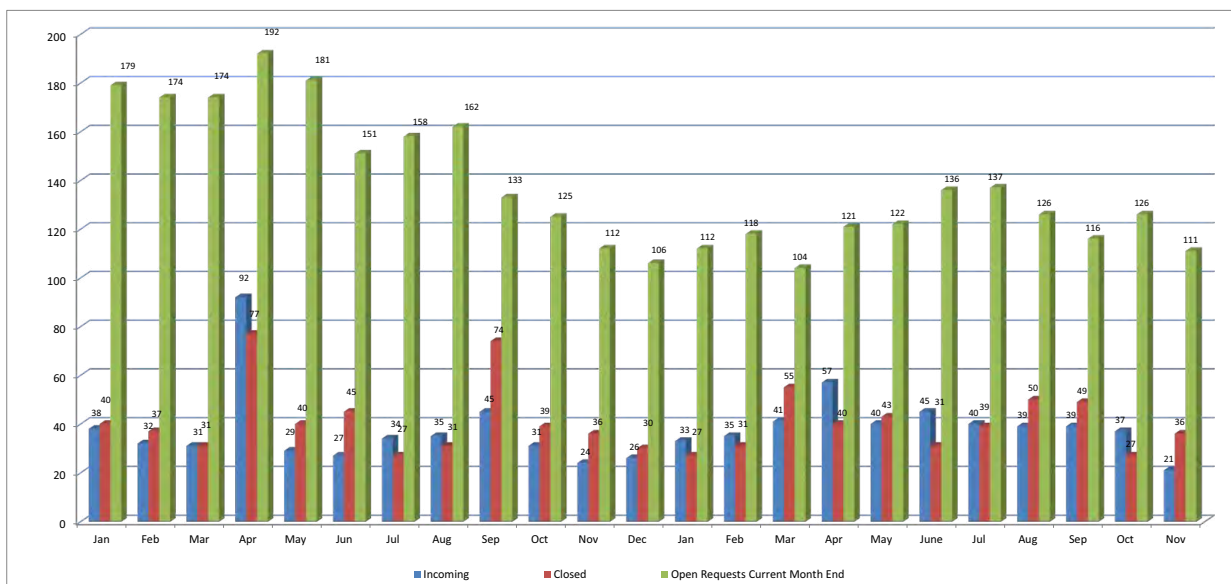
FOIA Monthly Status Report 11 30 2016

Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	5	0	3	2	2	3	0	5
CAO	1	0	1	0	0	0	0	0
CFO	0	0	0	0	0	0	0	0
CIO	1	0	0	1	0	0	0	0
CIO/FOIA	16	5	1	20	4	0	0	4
GC	4	0	2	2	0	1	0	1
IA	0	0	0	0	0	0	0	0
LA	0	1	0	1	0	0	0	0
NESDIS	4	0	3	1	0	2	0	2
NMFS	54	9	19	44	27	10	3	40
NOS	18	3	5	16	7	1	1	9
NWS	10	2	1	11	4	0	0	4
OAR	4	0	0	4	1	0	1	2
OMAO	0	0	0	0	0	0	0	0
OC	0	0	0	0	0	0	0	0
PPI	0	0	0	0	0	0	0	0
USAO	1	0	0	1	0	0	0	0
WFMO	8	1	1	8	5	2	0	7
NOAA Totals	126	21	36	111	50	19	5	74

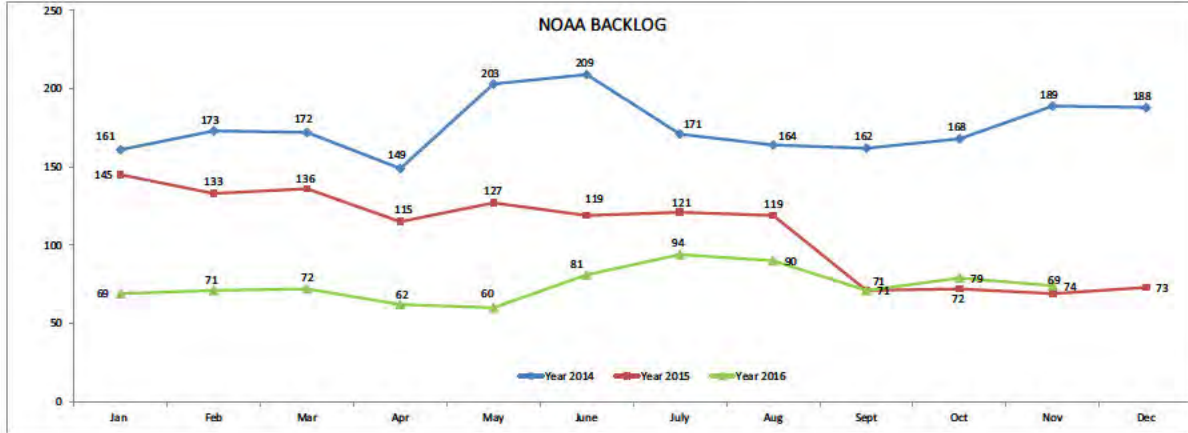
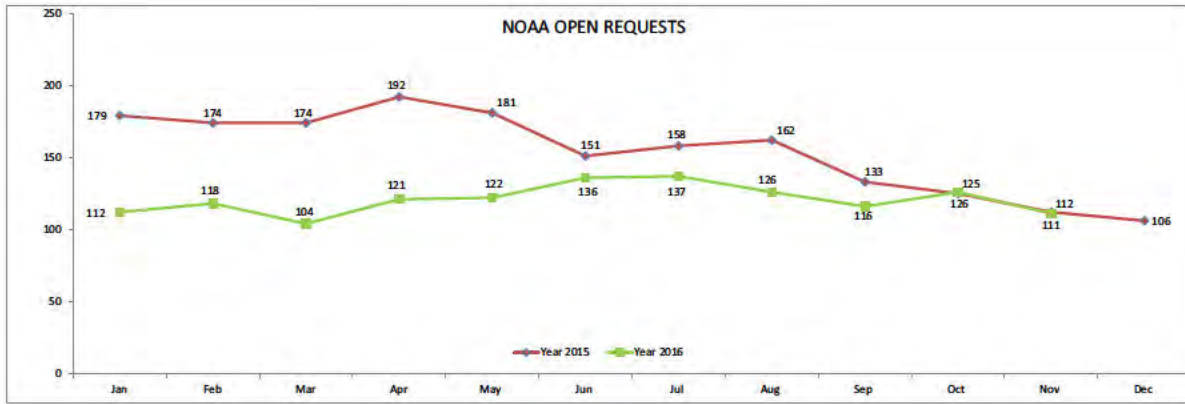




Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	5	0	3	2	2	3	0	5
CAO	1	0	1	0	0	0	0	0
CFO	0	0	0	0	0	0	0	0
CIO	1	0	0	1	0	0	0	0
CIO/FOIA	16	5	1	20	4	0	0	4
GC	4	0	2	2	0	1	0	1
IA	0	0	0	0	0	0	0	0
LA	0	1	0	1	0	0	0	0
NESDIS	4	0	3	1	0	2	0	2
NMFS	54	9	19	44	27	10	3	40
NOS	18	3	5	16	7	1	1	9
NWS	10	2	1	11	4	0	0	4
OAR	4	0	0	4	1	0	1	2
OMAO	0	0	0	0	0	0	0	0
OC	0	0	0	0	0	0	0	0
PPI	0	0	0	0	0	0	0	0
USAO	1	0	0	1	0	0	0	0
WFMO	8	1	1	8	5	2	0	7
NOAA Totals	126	21	36	111	50	19	5	74



4.xlsx



Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2017-000169	Request	MICHAEL PEPSO	Cause of Action	11/09/2016
DOC-NOAA-2017-000204	Request	Belinda Brannon		11/21/2016
DOC-NOAA-2017-000203	Request	Robert Moore		11/21/2016
DOC-NOAA-2017-000201	Request	Amber R. Matej		11/18/2016
DOC-NOAA-2017-000195	Request	Thomas Knudson	Center for Investigative Reporting	11/17/2016
DOC-NOAA-2017-000175	Request	Emily Alvarenga	San Diego State University	11/10/2016
DOC-NOAA-2017-000168	Request	MICHAEL PEPSO	Cause of Action	11/09/2016
DOC-NOAA-2017-000170	Request	MICHAEL PEPSO	Cause of Action	11/09/2016
DOC-NOAA-2017-000141	Request	Russ Rector		11/03/2016
DOC-NOAA-2017-000136	Request	Cadi Fung		11/02/2016
DOC-NOAA-2017-000226	Request	Emma Hiolski		11/29/2016
DOC-NOAA-2017-000202	Request	Steven Shaw		11/19/2016
DOC-NOAA-2017-000196	Request	Thomas Knudson	Center for Investigative Reporting	11/17/2016
DOC-NOAA-2017-000156	Request	David I. Katzman		11/09/2016
DOC-NOAA-2017-000140	Request	Michael Ravnitzky	No Association	11/01/2016
DOC-NOAA-2017-000213	Request	Marshall Morales	Riddell Williams	11/22/2016
DOC-NOAA-2017-000190	Request	Evynn Overton	Beveridge & Diamond PC	11/17/2016
DOC-NOAA-2017-000171	Request	Cody Rosenfield	Consumer Watchdog	11/08/2016
DOC-NOAA-2017-000185	Request	Elizabeth Nowicki		11/16/2016
DOC-NOAA-2017-000186	Request	Elizabeth Nowicki		11/16/2016
DOC-NOAA-2017-000187	Request	Elizabeth Nowicki		11/16/2016

Assigned To	Perfected?	Due	Closed Date	Status
LA	Yes	12/20/2016	TBD	Assignment Determination
NMFS	No	TBD	TBD	Assignment Determination
NMFS	No	TBD	TBD	Initial Evaluation
NMFS	No	TBD	TBD	Assignment Determination
NMFS	No	TBD	TBD	Submitted
NMFS	Yes	12/29/2016	TBD	Assignment Determination
NMFS	Yes	12/20/2016	11/29/2016	Closed
NMFS	Yes	01/05/2017	TBD	Assignment Determination
NMFS	Yes	12/19/2016	TBD	Assignment Determination
NMFS	Yes	12/16/2016	TBD	Assignment Determination
NOAA FOIA	No	TBD	TBD	Submitted
NOAA FOIA	No	TBD	TBD	Initial Evaluation
NOAA FOIA	No	TBD	TBD	Assignment Determination
NOAA FOIA	Yes	12/20/2016	11/21/2016	Closed
NOAA FOIA	Yes	12/13/2016	TBD	Assignment Determination
NOS	No	TBD	TBD	Initial Evaluation
NOS	Yes	12/29/2016	TBD	Assignment Determination
NOS	Yes	12/20/2016	TBD	Assignment Determination
NWS	Yes	12/15/2016	TBD	Assignment Determination
NWS	Yes	12/15/2016	TBD	Assignment Determination
WFMO	Yes	12/15/2016	TBD	Assignment Determination

Dispositions

Other - Aggregate cases

Other - Publicly available information

Detail

CoA Institute hereby requests access to the following records for the time period of January 1, 2014, to the present: Fishing Trawler Lady Julie Documentation No. : 1089342 Incident: Did this vessel sink?

My request is for information regarding the Western Pacific Sustainable Fisheries Fund. It is my understanding that to whom it may concern, I am requesting a copy of the Marine Mammal Inventory Report with all cetaceans, living and dead. All email correspondence sent and received by NOAA/NMFS employees on the steering committee for the 8th annual meeting. A record of each incident where either a sea lion or seal has been harmed or has harmed a human at a San Diego location. We are seeking to better understand the process leading to the President's issuance of Proclamation 9496 of September 2012. CoA Institute hereby requests access to the following records for the time period of January 1, 2014, to the present: Please send me the FULL AND COMPLETE MMIR on record at NMFS. Provide every field (shared/unshared) and I am requesting information from the National Marine Mammal Inventory database for all cetaceans held in captivity. I request access to and copies of any and all documents pertaining to California Governor Jerry Brown's request for any information on self.

A copy of the speech given by William Karp, NMFS Science and Research Director, NE Fisheries Science Center. Request for Certified Blue Ribbon Copies of Meteorological Records To Whom It May Concern: We request certification Pursuant to the provisions of the Freedom of Information Act, I hereby request a copy of the following records: Each 1. The index for the administrative record for the Portland Harbor natural resource damage assessment. 2. For all records I hereby request any and all correspondence pertaining to NOAA and/or Elliott Bay Trustee Council injury assessment. I'm requesting information regarding the testing of Tar Balls from California's coast in June of 2015 conducted by NMFS. Please accept this FOIA request as my request for all e-mails that you sent or received that informed your estimate of the number of Tar Balls. Please accept this e-mail as my request pursuant to FOIA for all e-mails or other documents created by or received by NMFS. Please accept this e-mail as my request pursuant to FOIA for all e-mails, text-messages, or "pings"; (e.g.

[REDACTED]

t: 1. All records or communications produced to the U.S. House of Representatives Committee on Natur

t this Fund receives funds paid as a part of the tuna fishing quota-sharing program involving the longline and deceased, from all facilities you have MMIR's for. Thank You, ~Amber Matej
ual International Fisheries Observer and Monitoring Conference in San Diego pertaining to any aspect c
beach in 2015. By harmed I mean that either the human or the animal has been physically injured. I wo
ember 15, 2016, 81 Fed. Reg. 65,161 (Sept. 21, 2016), which established the Northeast Canyons and S
t:4 1. All records or communications (including emails, text messages, and voicemails) referring or relati
everything on record. Specifically, I would like every field of information available of the MMIR to the p
y in US facilities, both currently alive and those who are deceased, and from all sources (wild caught, ca
February 09, 2016 letter to Secretary of Commerce Penny Pritzker) that a federal fishery disaster be dec

at the 8th International Fisheries Observer and Monitoring Conference in San Diego this year, along with
ed blue ribbon copies of all meteorological records, including surface weather observations, radiosounde
h weekly or monthly FOIA program internal status report for the National Oceanic and Atmospheric Adm
documents or records as described below that were created, received, or obtained on or after January 1
ents for the Lower Duwamish Waterway in Seattle, Washington..
NOAA. Multiple articles stated that NOAA would be conducting testing. As part of the request, I would liki
e of fifty hours. I would like the e-mail or text or form or whatever it is that you sent your FOIA contact ad
d John "Brent" Wachter pertaining to that 50 (FIFTY!) hour estimate. Meaning, if Brent e-mai
g. SMS) that you (Ms. Desrosiers) sent or received regarding me (Elizabeth Nowicki) or the concerns th

[REDACTED]
al Resources in response to the Committee's October 7, 2015, document request (attached as Exhibit 1

: fishing industry (largely in and around Hawaii) and U.S. possessions including, but limited to, the CNMI

of the conference for the time period Jan. 1, 2016 to present, including attachments.

uld also like a copy of each incident report along with the figures, and, if possible, I would like to receive
Seamounts Marine National Monument. CoA Institute hereby requests access to the following records fo
ng to a NOAA Town Hall meeting held on or about September 15, 2015, in Providence, Rhode Island, ar
resent. Also, I would like the record(s) in Excel format and correlate the information by date. Reference
ptive born, imported). The information will be used to calculate estimates of fish resources used to mair
lared following extended closure of West Coast Dungeness crab fisheries. This includes but is not limite

an audio recording of the speech.

e data, sequence reports, surface analysis charts, air surface charts, winds aloft and upper-air observati
nistration during calendar years 2015 and 2016. These may be either separate reports or they may be
l, 2000: (a) All agreements (including contracts, settlements, memoranda of understanding, memorande

e any test results that were received, and any information about the determination by your department a
vising of this fifty hour estimate. I would like all e-mails or other messages exchanged between you and
led Ms. Hernandez or his supervisor or someone else about the matter to estimate that it might take FIF
at I raised to you. Please only search for materials sent or received by you (Ms. Desroiers) between Nov

[REDACTED]

I to this FOIA request). 2. All records or communications referring or relating to the U.S. House of Representatives and the American Samoa. I am specifically requesting a) copies or access to any and all deposits into a

these records in electronic form.
for the time period of January 1, 2012, to the present: 1. All records or communications (including emails and publicized on NOAA's website on or about September 3, 2015 (attached as Exhibit 1 to this FOIA request) the MMIRs produced back in 1980s/1990s - in addition to everything else, include fields such as: Date of capture, maintain captive cetacean populations.
related to communications, reports and records about the fishery disaster, both within the Department of Commerce,

including Convective SIGMET 59C, Severe Weather Forecast Alert number 686, and any and all related information. I want a segment of another, more inclusive, internal administrative report. By the term internal status report, I mean a report of agreement, administrative orders on consent, consent decrees, and amendments thereto) involving

information related to the origin of the tar balls - or any other information garnered from the testing. As well as this testing, I want others in order to come up with or regarding this FIFTY hour estimate. I would like all e-mails or other records related to FIFTY hours to find and compile the records that I was requesting, I want a copy of that e-mail. If Brent filled out a report on September 11, 2016, and November 16, 2016, and please only search your workplace computer and/or electronic files.

[REDACTED]
Representatives Committee on Natural Resources October 7, 2015, document request (attached as Exhibit 1

and payments from the Fund since the creation of the Fund; b) any and all records related to payments f

from governmental and nongovernmental accounts, text messages, and emails) referring or relating to (quest), including · but not limited to all written comments, as well as all communications with non of location Capture Date Capture Place Origination of the animals

commerce and between the DOC and external agencies.

information and documents, for the date of 4/4/16 pertaining to Pigeon Forge TN.

mean any periodic (i.e., weekly or monthly) internal report (or email) on the activities and/or accomplish the Portland Harbor Natural Resource Trustee Council or referring to the Portland Harbor natural resou

data - I'd like the results of any other tar ball tests conducting in California over the last 5 years.

messages that you exchanged regarding Brent Wachter complying with my pending FOIA request.

filled out a form, I want a copy of that form.

electronic device(s). Please spend no more than two hours searching for the responsive materials to this re

[REDACTED]
to this FOIA request). 3. All records or communications responsive to the U.S. House of Representative
from the Fund to the Western Pacific Regional Fisheries Council; c) any and all records of payments to i

use of the Antiquities Act to create a national monument in the Atlantic Ocean.
governmental organizations referring or relating to the September 15, 2015, NOAA Town Hall meeting.

ments of the NOAA FOIA program. I prefer to receive the records in electronic format if practicable. Ple
rce damage assessment. This request includes any funding agreements and cooperative assessment a

quest. Please keep careful track of the time that you search, and please provide as part of your respons

[REDACTED]
as Committee on Natural Resources October 7, 2015, document request (attached as Exhibit 1 to this F
individuals or organizations for travel purposes related to the quota-sharing compliance or activities.

2. All records or communications (including emails and voicemails) referring or relating to a "publi

ase release all segregable releasable records.
reements. (b) All agreements (including contracts, settlements, memoranda of understanding, memor:

e to this FOIA request any time sheet or other documentation that you use or complete to document ho

[REDACTED]
FOIA request). 4. All records or communications (including but not limited to emails and voicemails) rece

c event" held by the Conservation Law Foundation, Natural Resources Defense Council, National

anda of agreement, administrative orders on consent, consent decrees, and amendments thereto) with c

w much time you have spent searching for materials responsive to this FOIA request.

[REDACTED]
ived from or sent to any member of the United States Congress or his or her staff and/or a congressiona

Geographic Society, and Pew Charitable Trusts at the New England Aquarium on or about September 2

or involving the Confederated Tribes and Bands of the Yakama Nation (including abbreviated references

[REDACTED]
al Committee and/or its staff referring or relating to the Northeast Canyons and Seamounts Marine

, 2015, during which these groups purportedly "formally called for the creation of the At

s to the “Yakama Nation,” “Yakama Tribe,” or “Yakama”) where the agreement refers to Portland Harbor



; the Columbia

From: Deanna Harwood - NOAA Federal <deanna.harwood@noaa.gov>
Sent: Wednesday, December 7, 2016 2:58 PM
To: Mark Graff - NOAA Federal
Subject: Fwd: New FOIA Referral from FEMA Received
Attachments: 9-16-2016 FEMA Referral to NMFS.pdf; EA FOIA request to FEMA.pdf; 2016-FEFO-01357 NMFS referral.pdf

Deanna Harwood
Deputy Chief, Southwest Section
NOAA, Office of General Counsel
U.S. Department of Commerce
501 W. Ocean Blvd., Suite 4470
Long Beach, CA 90802
(562) 980-4068

----- Forwarded message -----

From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Date: Wed, Dec 7, 2016 at 11:56 AM
Subject: Fwd: New FOIA Referral from FEMA Received
To: Deanna Harwood <deanna.harwood@noaa.gov>
Cc: Laurie Beale - NOAA Federal <laurie.beale@noaa.gov>, Shawn Martin <shawn.martin@noaa.gov>, Doug Chow <doug.chow@noaa.gov>

Here is the FEMA referral from September.

----- Forwarded message -----

From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Date: Fri, Sep 23, 2016 at 7:50 AM
Subject: Fwd: New FOIA Referral from FEMA Received
To: Laurie Beale - NOAA Federal <laurie.beale@noaa.gov>, Lamar Turner <lamar.turner@noaa.gov>
Cc: Douglas Chow - NOAA Federal <doug.chow@noaa.gov>, Shawn Martin - NOAA Federal <shawn.martin@noaa.gov>, Tom Ahnemann - NOAA Federal <Thomas.Ahnemann@noaa.gov>, Joseph Dillon - NOAA Federal <joseph.j.dillon@noaa.gov>, Sandra Schoof - NOAA Affiliate <sandra.schoof@noaa.gov>, Cynthia Hohn - NOAA Affiliate <cynthia.hohn@noaa.gov>

FYI.

----- Forwarded message -----

From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Date: Fri, Sep 23, 2016 at 7:47 AM
Subject: New FOIA Referral from FEMA Received
To: FOIA Office - NOAA Service Account <foia@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Cc: Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>, Shawn Martin - NOAA Federal

<shawn.martin@noaa.gov>

See attached FOIA Referral received from FEMA via U.S. Certified Mail. A copy of FEMA's response letter was not in the transmittal envelope.

--

Ana Liza S. Malabanan
Freedom of Information Act (FOIA) Coordinator
Information Services and Management Branch
Operations, Management & Information Division
NOAA Fisheries West Coast Region
U.S. Department of Commerce
Office: [562-980-4008](tel:562-980-4008)



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ENVIRONMENTAL ADVOCATES
ATTORNEYS AT LAW

5135 ANZA STREET
SAN FRANCISCO, CA 94121
(415) 533-3376
Fax: (415) 358-5695
E-mail: csroul@enviroadvocates.com

April 8, 2016

Federal Emergency Management Agency FOIA Branch
Records Management/Disclosure Branch
500 C Street, SW
Washington, D.C. 20472-3172
E-mail: FEMA-FOIA@fema.dhs.gov and fema-foia@dhs.gov.

Re: Freedom of Information Act Request

Dear Freedom of Information Act Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C § 552, and relevant Federal Emergency Management Agency ("FEMA") regulations set forth in 44 C.F.R. part 5, Ecological Rights Foundation ("EcoRights") (via counsel), hereby requests the following information:

Note: all requests set forth below are for documents generated on or after January 1, 2009 through the date that FEMA responds to this request, but excluding any documents already submitted by FEMA to EcoRights in response to EcoRights' two recent FOIA requests submitted to FEMA on June 8, 2015 (FEMA 2015-FEFO-00491 / 2015-FELI-00006), and December 8, 2015 (FEMA 2016-FEFO-00468):

1. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning any Endangered Species Act ("ESA") section 7 consultations (16 U.S.C. § 1536) that have been initiated or proposed, including Biological Opinions, Biological Assessments, or informal consultations, pertaining to the implementation of the National Flood Insurance Program ("NFIP") in California.
2. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning any ESA section 10 permits or habitat conservation plans (16 U.S.C. § 1539) that have been initiated or proposed, pertaining to the implementation of the NFIP in California.
3. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) submitted to FEMA by the National Marine Fisheries Service ("NMFS"), U.S. Fish and Wildlife Service ("USFWS"), the California Department of Fish and Wildlife, or any other State or Federal agency or department pertaining to the ESA and the implementation of the NFIP in California.

4. Any reports, memoranda, correspondence to or from FEMA, or other documents (including electronic mail messages) concerning any Endangered Species Act ("ESA") section 7 consultations (16 U.S.C. § 1536) that have been initiated or proposed, including Biological Opinions, Biological Assessments, or informal consultations, pertaining to any national level draft or final rule(s) related to the National Flood Insurance Program, in what may be known by FEMA, National Marine Fisheries Service ("NMFS"), or U.S. Fish and Wildlife Service ("USFWS") personnel as "draft rule/rulemaking regarding updates to the National Flood Insurance Program to facilitate improved Endangered Species Act compliance," "new proposed minimum floodplain management criteria," "proposed ESA-related performance standard," or some related variation thereof.

EcoRights requests that FEMA's response to this request include clear response period dates.

44 C.F.R section 5.52(b) requires that FEMA notify EcoRights within 10 working days whether it has approved the request. 44 C.F.R section 5.54(b) requires that should FEMA deny any portion of this request that it notify EcoRights in writing within 10 working days and state which of the requested records will, and which will not, be released and the reason for any denial of any portion of this request. As provided by 44 C.F.R section 5.56, FEMA may extend this obligation by furnishing written notice to the requestor as soon as practicable stating the reasons for such extension and the date by which the office expects to be able to issue a determination. Pursuant to 44 C.F.R section 5.56 the period may be so extended for only one or more of the following unusual circumstances: (1) there is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) there is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (3) there is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of FEMA.

We request that to the extent that FEMA can do so, EcoRights be furnished with electronic copies of the above documents in lieu of paper copies (to minimize the expense and burden of copying). 5 U.S.C. § 552(a)(3)(B) ("an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format"). Pursuant to 5 U.S.C. section 552(a)(4)(A)(iii) and 44 C.F.R section 5.43, we hereby request a fee waiver for all copying costs, mailing costs, and other costs related to locating and tendering the documents, in accord with the attached fee waiver statement. Please produce documents responsive to this request on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

We request that FEMA provide electronic copies of its determination of its response to this request to me and to Christopher Hudak at the following e-mail addresses (as well as any responsive documents that you can transmit to us via e-mail):

Christopher Sproul: csproul@enviroadvocates.com
Christopher Hudak: christopherwhudak@gmail.com

Freedom of Information Act Request

April 7, 2016

Page 3

Please send any documents that you need to transmit via mail to the following address:

Christopher Sproul
Environmental Advocates
5135 Anza St.
San Francisco, California, 94121

Your staff may contact Christopher Hudak at (510) 502-5742 or at christopherwhudak@gmail.com to further discuss FEMA's response to this request.

Thank you for your prompt attention to this matter.

Sincerely,



Christopher Sproul
Attorney for Ecological Rights Foundation

Encl.: *Attachment 1 (Fee Waiver Request)*

Attachment 1
Fee Waiver Request

FEE WAIVER REQUEST ATTACHMENT

FOIA requires the government to produce documents without any charge or at a reduced charge when the request is: (1) "likely to contribute significantly to public understanding of the operations or activities of the government" and (2) "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). Because Ecological Rights Foundation's ("EcoRights") request satisfies both of these factors, EcoRights qualifies for a fee waiver under FOIA.

A. EcoRights' request will contribute significantly to public understanding of FEMA's operations.

EcoRights meets the requirements for fee waiver set forth in FEMA FOIA regulation 44 C.F.R. section 5.43 and satisfies the 4-part test for the public interest exception detailed in the Department of Justice Guide to the Freedom of Information Act ("DOJ FOIA Guide"), available at <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fecs-feewaivers.pdf>. Case law suggests that the public interest exception should be viewed in an expansive manner. *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1315 (D.C. Cir. 2003). As shown below, EcoRights meets the requirements set forth in 44 C.F.R. section 5.43 and the DOJ FOIA Guide and should be granted a fee waiver.

- i. *Whether the subject of the requested records concerns "the operations or activities of the government."*

EcoRights' Response

First, Ecological Rights Foundation ("EcoRights") is requesting information from FEMA regarding any Endangered Species Act ("ESA") section 7 consultations or any ESA section 10 permitting/habitat conservation plans that relate to the National Flood Insurance Program ("NFIP") in California. This request includes documents generated by FEMA and materials submitted to FEMA by other agencies such as National Marine Fisheries Service ("NMFS") or U.S. Fish and Wildlife Service ("FWS") regarding FEMA's compliance with the ESA.

Second, EcoRights is also requesting information from FEMA regarding any ESA section 7 consultations at the national level regarding the NFIP.

The documents sought therefore relate to specific activities carried out by FEMA and are closely related to the subject matter of the request.

- ii. *Whether the disclosure is "likely to contribute" to an understanding of specific government operations or activities. Disclosure of the requested information must be meaningfully informative in relation to the subject matter of the request.*

EcoRights' Response

EcoRights is requesting information from FEMA regarding any Endangered Species Act ("ESA") section 7 consultations or any ESA section 10 permitting that relate to the National Flood Insurance Program ("NFIP") in California. This request includes documents generated by FEMA and materials submitted to FEMA by other agencies such as National Marine Fisheries Service

("NMFS"), U.S. Fish and Wildlife Service ("FWS"), or the California Department of Fish and Wildlife regarding FEMA's compliance with the ESA.

Since a number of federal courts have already held that FEMA must consult with NMFS/USFWS over the NFIP, EcoRights is concerned that FEMA has not fulfilled its requirements under the ESA in California. EcoRights' FOIA request is designed to gather information that will indicate to the public whether FEMA is complying with the ESA, whether FWS, NMFS, or the California Department of Fish and Wildlife have considered the effects of the NFIP on endangered/threatened species in California, and whether conservation measures that are or should be required by the ESA are being implemented or should be implemented by FEMA and to what effect on endangered/threatened species.

EcoRights is unaware of any public release of any documents by FEMA regarding any ESA section 7 consultations or section 10 consultations in California pertaining to the NFIP and thus none of it, if it exists, is in the public domain. These records are of vital importance to the public to understand how the NFIP, which has an enormous impact on development in floodplains and on wildlife habitat, is fulfilling its obligations under the ESA and thus are "likely to contribute" to public understanding. The documents requested should constitute the best evidence available of FEMA's actions to ensure that the NFIP does not impose adverse impacts on endangered/threatened species, and thus would provide "meaningful" information for the public on these governmental actions.

EcoRights is further requesting information from FEMA regarding any ESA section 7 consultations at the national level regarding the NFIP.

Since a number of federal courts have already held that FEMA must consult with NMFS/USFWS over the NFIP, EcoRights is concerned that FEMA may not fulfill its requirements under the ESA as it implements and/or amends the NFIP regulations, which would in turn greatly impact California. EcoRights's FOIA request is designed to gather information that will indicate to the public whether FEMA is complying with the ESA as it implements and/or amends the NFIP at the national level, whether FWS, NMFS, or other agencies have adequately considered the effects of implementing/amending the NFIP on endangered/threatened species nationally and/or in California, and whether conservation measures that are or should be required by the ESA are being implemented or should be implemented by FEMA and to what effect on endangered/threatened species.

EcoRights is unaware of any public release of any documents by FEMA regarding any national level ESA section 7 consultations on any draft NFIP regulations, and thus none of it, if it exists, is in the public domain. These records are of vital importance to the public to understand how the NFIP, which has an enormous impact on development in floodplains and on wildlife habitat, is fulfilling its obligations under the ESA and thus are "likely to contribute" to public understanding. The documents requested should constitute the best evidence available of FEMA's actions to ensure that the NFIP does not impose adverse impacts on endangered/threatened species, and thus would provide "meaningful" information for the public on these governmental actions.

iii. *Whether the disclosure will contribute to "public understanding" as opposed to the individual understanding of the requester or a narrow segment of interested persons.*

iv. *Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.*

EcoRights' Response

EcoRights is well positioned to both analyze and publicize the information requested to a broad audience. EcoRights is a community-based educational nonprofit corporation committed to the protection, preservation and restoration of floodplains and the endangered species that inhabit them in California. EcoRights seeks the requested information to work to insure that the endangered/threatened species in California's watersheds are protected as required by the ESA. EcoRights' attorneys have extensive expertise with the ESA, FOIA, and other environmental laws and can efficiently analyze the technical documents this request seeks. EcoRights was founded as a community movement organization and its members are extraordinarily active. In addition to their membership, EcoRights uses the tools of education and advocacy to inform a greater audience. EcoRights will use the requested information to inform the public of issues regarding any steps taken by FEMA to comply with the ESA and any FWS/NMFS/California Department of Fish and Wildlife considerations of the impacts of the NFIP on endangered/threatened species and recommendations concerning these impacts, via EcoRights' own publications, press releases, briefings in public meetings, correspondence to other public interest groups, and postings on their own or other groups' internet web sites.

In *Judicial Watch v. Rossotti*, the court explained that nothing in FOIA, agency regulations, or case law requires specificity beyond explaining that the requestor plans to disseminate the information. 326 F.3d at 1314. Furthermore, in *Carney v. US DOJ*, 19 F.3d 807 (2nd Cir. 1994), the court indicated that a fee waiver request need not demonstrate that the information will be shared with a large cross-section of the public. As long as the requested information is disseminated "to a reasonably broad audience of persons interested in the subject" the public dissemination test may be satisfied. *Id.* Thus, to meet the third factor, EcoRights need only explain how the information received will be disseminated to persons interested in the ecological health of Californian floodplains and the endangered species therein in detailed and non-conclusory terms.

EcoRights' present request meets the requirements of the public understanding factor as EcoRights will analyze the information it receives from FEMA and make its conclusions known to its members, other environmental groups, and the public at large. EcoRights' analyses will be disseminated via press releases as well as posted on EcoRights' web sites (<http://www.ecorights.org>) and likely the web sites of other environmental groups. EcoRights has a proven track record of obtaining press coverage of the environmental issues it publicizes. Generally, EcoRights obtains press coverage in the local and/or national media, including newspapers and radio stories. For example, EcoRights' recent filing of an ESA citizen suit concerning Stanford University's operations in the San Francisquito Creek watershed was covered by several San Francisco Bay Area newspapers and KQED radio. EcoRights regularly issues press releases and includes them on its website.

Given EcoRights' extensive media contacts, EcoRights' publication of the materials requested by this FOIA request will contribute to its members', other environmental groups', and the general public's understanding how FEMA is adhering to the requirements of the ESA as it implements the NFIP. Thus, EcoRights meets the public understanding requirement through its concrete plans to disseminate the requested information to a broad audience of persons interested in the health of California's floodplains and watersheds and the endangered/threatened species that use them for critical habitat.

- iv. Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.*

EcoRights' Response

Disclosure of the requested information will significantly contribute to public understanding of FEMA's compliance with the ESA in its implementation and or/amendment of the NFIP, and how this compliance is affecting protection of endangered/threatened species. The details of FEMA's compliance with the ESA in its implementation of the NFIP in California is not generally known by the public, nor is how FEMA intends to comply with the ESA as it makes any amendments at the national level to the NFIP. As discussed above, there has been no public release of any documents by FEMA regarding any ESA section 7 consultations or section 10 consultations in California pertaining to the NFIP. Nor has there been any public release of documents from FEMA regarding any section 7 consultations it is engaged in currently over the NFIP at the national level. This information is critical for the public to have in order to assess whether FEMA taking all required steps to protect endangered/threatened species. Thus, EcoRights's request and subsequent dissemination will significantly enhance public knowledge.

B. EcoRights' request is not primarily in the commercial interest of the requestor.

In addition to showing that the requested records will contribute significantly to the public understanding of government operations, EcoRights must show that the request is "not primarily in the commercial interest of the requestor." To do so, under the DOJ FOIA guidelines for fee waivers EcoRights must demonstrate (1) the existence and magnitude of a commercial interest, if there is one, and (2) the primary interest in disclosure, and whether that interest is primarily in the commercial interest of the requestor. As explained below, EcoRights does not seek the requested information for any commercial interest, and thus qualify for a fee waiver.

- i. Whether the requester has a commercial interest that would be furthered by the requested disclosure.*

EcoRights Response

EcoRights is a community-based educational nonprofit corporation committed to the protection, preservation and restoration of watersheds and floodplains in California as well as the threatened or endangered species that live therein. For over 15 years EcoRights has been devoted to furthering the rights of all people to a clean, healthful and biologically diverse environment. To further EcoRights' environmental advocacy goals, EcoRights actively seeks federal and state agency implementation of state and federal water quality and wildlife related laws, and as necessary, directly initiates enforcement actions on behalf of itself and its members. Accordingly, EcoRights has no commercial interest in the information requested. Rather, EcoRights is seeking the information solely: (1) to determine whether FEMA is complying with the requirements of the Endangered Species Act in its implementation of the NFIP in California; (2) to determine whether FEMA is complying with the requirements of the ESA in its implementation or amendment of the NFIP at the national level, which in turn greatly impacts California, (3) to educate the public regarding FEMA's compliance with the ESA as it implements the NFIP in California/nationally; and (4) to assist in EcoRights' efforts to advocate that the appropriate state, federal, or private entities take needed actions to protect California's floodplains and the species that live therein.

EcoRights has no financial interest in the information sought or any enforcement actions that may result from it. EcoRights' goal in urging enforcement of environmental laws is not for any private financial gain, but serves only to vindicate the larger public interest in compliance with environmental laws designed to protect ecosystems and the species that live therein.

ii. Whether, on balance, the requester's commercial interest or the identified public interest is "primary."

EcoRights' Response

EcoRights has no commercial interest in the requested information, as discussed above. Accordingly, the identified public interest in the disclosure of the requested information discussed above necessarily outweighs any commercial interest in this request.

For the above reasons, EcoRights respectfully requests a fee waiver pursuant to 5 U.S.C. section 552(a)(4)(A)(iii) and 44 C.F.R. section 5.43, for all copying costs, mailing costs, and other costs related to locating and tendering the documents.

From: [Christopher Sproul](#)
To: [FEMA-FOIA](#); [FEMA-FOIA](#)
Cc: [Tseng, Neill \(USACAN\)](#); [Christopher Hudak](#); [Rich, Paula](#)
Subject: Fwd: FOIA request for you to send
Date: Friday, April 08, 2016 12:58:16 PM
Attachments: [EcoRights 4-8-16 FOIA Request.pdf](#)

Dear FEMA FOIA Officer,

Attached please find Ecological Rights Foundation's April 8, 2016 FOIA request to FEMA and accompanying fee waiver request.

Sincerely,

Christopher Sproul

--
Christopher Sproul
Environmental Advocates
5135 Anza Street
San Francisco, California 94121
Phone: (415) 533-3376
Fax: (415) 358-5695
E-mail: csproul@enviroadvocates.com

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
Sent: Thursday, December 8, 2016 8:35 AM
To: Lola Stith - NOAA Affiliate; Mark Graff - NOAA Federal
Cc: Arlyn Penaranda - NOAA Federal; Milena Seelig - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Lola/Mark,

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Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:
Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>
To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>
Sent: Fri, Nov 18, 2016 4:29 pm
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]

Sent: Wednesday, November 02, 2016 1:51 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Sent: Tue, Oct 18, 2016 1:39 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]

Sent: Tuesday, October 18, 2016 1:15 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>

Sent: Tue, Oct 18, 2016 12:58 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

*Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230*

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,*
- our response to your request,*
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.*
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.*

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting

an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

*Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov*

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

4. "I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require."

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday - Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

1315 East-West Highway

SSMC 3, Suite 3301

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?
3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.
4. I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>

To: scottdoyle137 <scottdoyle137@aol.com>

Sent: Thu, Sep 1, 2016 9:08 am

Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvement Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff

NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: 301-427-8244

lorna.martin-gross@noaa.gov

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From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
Sent: Thursday, December 8, 2016 11:07 AM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Arlyn Penaranda - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Question,

(b)(5)
[Redacted]
[Redacted]
[Redacted]?

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5) [Redacted].

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) [Redacted] (C)

On Thu, Dec 8, 2016 at 8:34 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Lola/Mark,

(b)(5) [Redacted]
[Redacted]?

Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:

Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>

To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>

Sent: Fri, Nov 18, 2016 4:29 pm

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: lola.m.stith <lola.m.stith@noaa.gov>

Cc: scottdoyle137 <scottdoyle137@aol.com>

Sent: Wed, Nov 2, 2016 2:05 pm

Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]

Sent: Wednesday, November 02, 2016 1:51 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Sent: Tue, Oct 18, 2016 1:39 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Tuesday, October 18, 2016 1:15 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>
Sent: Tue, Oct 18, 2016 12:58 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must

be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

4. “I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.”

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday – Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross
Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:(301)-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?
3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.
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If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>

To: scottdoyle137 <scottdoyle137@aol.com>

Sent: Thu, Sep 1, 2016 9:08 am

Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvent Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff

NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: 301-427-8244

lorna.martin-gross@noaa.gov

From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Thursday, December 8, 2016 11:18 AM
To: Lorna Martin-Gross - NOAA Federal
Cc: Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

(b)(5) [Redacted]
[Redacted]
[Redacted]

Lola

On Thu, Dec 8, 2016 at 11:07 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Question,

(b)(5) [Redacted]
[Redacted]
[Redacted]
[Redacted]

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5) [Redacted]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) [Redacted] (C)

On Thu, Dec 8, 2016 at 8:34 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Lola/Mark,

(b)(5) [Redacted] ?

Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:
Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>
To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>
Sent: Fri, Nov 18, 2016 4:29 pm
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross
OLE Records Manager
Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Wednesday, November 02, 2016 1:51 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?.

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Sent: Tue, Oct 18, 2016 1:39 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]

Sent: Tuesday, October 18, 2016 1:15 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>

Sent: Tue, Oct 18, 2016 12:58 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

“We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

*Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230*

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,*
- our response to your request,*
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.*
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.*

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required. The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

*Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov*

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

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Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday – Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross

Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]

Sent: Friday, October 14, 2016 2:20 PM

To: Scott Doyle

Cc: Lorna Martin-Gross - NOAA Federal

Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?
3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.
4. I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>
To: scottdoyle137 <scottdoyle137@aol.com>
Sent: Thu, Sep 1, 2016 9:08 am
Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvent Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff
NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c) (b)(6)

lola.m.stith@noaa.gov

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From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Friday, December 9, 2016 9:21 AM
To: Lorna Martin-Gross - NOAA Federal
Cc: Mark Graff - NOAA Federal
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Lorna (b)(5)

Lola

On Fri, Dec 9, 2016 at 8:15 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Lola,

(b)(5)

Thank you,

Lorna

On Thu, Dec 8, 2016 at 11:34 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:(301)628-5658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:31 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

(b)(5)

Lola

On Thu, Dec 8, 2016 at 11:23 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:07 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Question,

(b)(5)
[Redacted]
[Redacted]
[Redacted]
[Redacted] ?

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
(b)(5)
[Redacted].

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 8:34 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Lola/Mark,

(b)(5)
[Redacted] ?

Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:
Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>

To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>

Sent: Fri, Nov 18, 2016 4:29 pm

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: lola.m.stith <lola.m.stith@noaa.gov>

Cc: scottdoyle137 <scottdoyle137@aol.com>

Sent: Wed, Nov 2, 2016 2:05 pm

Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]

Sent: Wednesday, November 02, 2016 1:51 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?.

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Sent: Tue, Oct 18, 2016 1:39 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Tuesday, October 18, 2016 1:15 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>
Sent: Tue, Oct 18, 2016 12:58 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons

why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875

14th and Constitution Avenue, N.W.

Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510

8601 Adelphi Road

College Park, MD 20740-6001

Email: ogis@nara.gov

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

4. "I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require."

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday - Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross

*Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov*

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer

National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?
3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.
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I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>
To: scottdoyle137 <scottdoyle137@aol.com>
Sent: Thu, Sep 1, 2016 9:08 am
Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

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Mark Graff
NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

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Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c **(b)(6)**)

lola.m.stith@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

(b)(5)

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
Sent: Friday, December 9, 2016 8:16 AM
To: Lola Stith - NOAA Affiliate
Cc: Mark Graff - NOAA Federal
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Lola,

(b)(5)

Thank you,

Lorna

On Thu, Dec 8, 2016 at 11:34 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

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(b)(5)

Lola

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(b)(5)

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FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

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Question,

(b)(5)

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

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Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
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(b)(5) ?

Lorna

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Ladies.

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Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>

To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>

Sent: Fri, Nov 18, 2016 4:29 pm

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

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Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager
Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Wednesday, November 02, 2016 1:51 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Sent: Tue, Oct 18, 2016 1:39 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

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Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager
Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Tuesday, October 18, 2016 1:15 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>

Sent: Tue, Oct 18, 2016 12:58 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

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The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

*Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.*

Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

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Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

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If this is not the proper way to request an extension of an appeal please let me know the method you require.”

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday - Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross
*Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: 301-427-8244
lorna.martin-gross@noaa.gov*

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.

2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?

3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.

4. I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>

To: scottdoyle137 <scottdoyle137@aol.com>

Sent: Thu, Sep 1, 2016 9:08 am

Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvement Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff

NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross
Records Manager
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U.S. Department of Commerce
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lorna.martin-gross@noaa.gov

--

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6))
lola.m.stith@noaa.gov

--

Ms. Lorna Martin-Gross
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U.S. Department of Commerce

Office: 301-427-8244

lorna.martin-gross@noaa.gov

(b)(5)

From: Deanna Harwood - NOAA Federal <deanna.harwood@noaa.gov>
Sent: Friday, December 9, 2016 3:13 PM
To: Ana Liza Malabanan; Mark Graff - NOAA Federal; John Almeida - NOAA Federal; Kathryn Kempton
Cc: Judson Feder
Subject: Fwd: Ecological Rights Foundation v. FEMA: Proposed Second Amended Complaint
Attachments: 21 - Motion For Leave To File SAC.PDF; 21-1 Proposed SAC.PDF

FYI. See DOJ's email below. (b)(5)

[REDACTED]

[REDACTED]

[Deanna Harwood](#)
Deputy Chief, Southwest Section
NOAA, Office of General Counsel
U.S. Department of Commerce
501 W. Ocean Blvd., Suite 4470
Long Beach, CA 90802
(562) 980-4068

----- Forwarded message -----

From: Wall, Robin (USACAN) <Robin.Wall@usdoj.gov>
Date: Fri, Dec 9, 2016 at 11:49 AM
Subject: Ecological Rights Foundation v. FEMA: Proposed Second Amended Complaint
To: Deanna Harwood - NOAA Federal <deanna.harwood@noaa.gov>

Deanna,

FYI (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

Best,

Robin

Robin M. Wall

Assistant United States Attorney

United States Attorney's Office, Northern District of California

450 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

[415.436.7071](tel:415.436.7071)

robin.wall@usdoj.gov

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11 Santa Cruz, CA 95060
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14 Email: ecorights@earthlink.net

15 Attorneys for Plaintiff
16 ECOLOGICAL RIGHTS FOUNDATION

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 ECOLOGICAL RIGHTS FOUNDATION, a
20 non-profit corporation,

21 Plaintiff,

22 v.

23 FEDERAL EMERGENCY MANAGEMENT
24 AGENCY, an agency of the Department of
25 Homeland Security,

26 Defendant.

Civil Case No. 16-cv-05254-MEJ

**NOTICE OF MOTION AND MOTION
FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT**

Hearing Date: 10:00 AM, January 19, 2017

Location: 450 Golden Gate Avenue, 15th
Floor, Courtroom B,
San Francisco, CA 94102

27
28

NOTICE OF MOTION

Pursuant to Local Rule 7.2 Plaintiff Ecological Rights Foundation (“EcoRights” or “Plaintiff”) provides notice that on January 19, 2017 at 10:00 AM or as soon thereafter as counsel can be heard, Plaintiff will move this Court in Courtroom B, 15th Floor, 450 Golden Gate Avenue, San Francisco, California, to grant a motion pursuant to Fed. R. Civ. P. 15(a) for leave to file Plaintiff’s Second Amended Complaint. Plaintiff’s Second Amended Complaint adds additional FOIA claims against the Federal Emergency Management Agency agency ("FEMA") and new claims against the National Marine Fisheries Service (“NMFS”). Plaintiff seeks leave to amend in accord with the liberal rules allowing pleading amendment to advance the vindication of all meritorious claims in a single proceeding.

MEMORANDUM OF POINTS AND AUTHORITIES OF SUPPORT OF MOTION

I. INTRODUCTION

Plaintiff moves this court, pursuant to Federal Rules of Civil Procedure (“FRCP”) 15(a) for an order granting Plaintiff leave to amend its Complaint in this action. A copy of the proposed Second Amended Complaint is attached to this motion as Exhibit A.

Plaintiff’s proposed Second Amended Complaint would: 1) revise the First Claim for Relief to include an allegation that FEMA improperly withheld responsive documents for one of the Freedom of Information Act (“FOIA”) requests at issue, 2) revise the Third Claim for Relief to allege that FEMA imposed an invalid search cut-off for one of the FOIA requests at issue, and remove claims brought under FEMA agency regulations that will soon be superseded, 3) add a Fourth Claim for Relief regarding FEMA’s failure to timely refer documents to one of its sister agencies, including from a FOIA request not addressed in the First Amended complaint; 4) add a Fifth Claim for Relief regarding FEMA’s failure to respond to two FOIA requests within FOIA deadlines, including from a FOIA request not addressed in the First Amended Complaint 5) add a Sixth Claim for Relief regarding NMFS’s failure to make timely determinations on documents referred to it by FEMA, and for failure to promptly provide the documents to EcoRights, including from a FOIA request not addressed in the First Amended Complaint; and 6) add a Seventh Claim for Relief regarding NMFS’s pattern and practice of failing to

1 timely respond to FOIA requests, particularly those that have been referred to them by other agencies.

2 Plaintiff has contacted Defendant FEMA's counsel concerning this Motion. Counsel for FEMA
3 has stated that Defendant FEMA will not oppose this Motion for Leave to File Plaintiff's Second
4 Amended Complaint.

5 **II. FACTUAL BACKGROUND**

6 In keeping with its organizational purposes as a nonprofit public interest advocacy group,
7 Plaintiff has sent FEMA three FOIA requests seeking up-to-date information about FEMA's compliance
8 with the Endangered Species Act ("ESA") as the agency implements the National Flood Insurance
9 Program ("NFIP") in California. FOIA imposes a 20 working day deadline for federal agencies to issue
10 a final determination as to how they will respond to FOIA requests. 5 U.S.C. § 552(a)(6)(A)(i). In
11 unusual circumstances the agency may extend the time for the determination for no more than ten days
12 by written notice to the party specifying the reasons for the extension and the date on which the
13 determination is expected to be sent. 5 U.S.C. § 552(a)(6)(B)(i). A party may administratively appeal
14 any agency's adverse determination on FOIA requests. 5 U.S.C. § 552(a)(6)(A)(i). Agencies must
15 decide such appeals within twenty business days. 5 U.S.C. § 552(a)(6)(A)(ii). FEMA has not complied
16 with these mandatory deadlines.

17 Plaintiff sent the FOIA request at issue in the First Amended Complaint on April 8, 2016, which
18 FEMA assigned number "FEMA 2016-FEFO-01357" ("April 2016 FOIA Request"). The FOIA deadline
19 for FEMA's final response to this request was May 20, 2016. FEMA did not meet this deadline as it did
20 not provide what might be the final determination on the April 2016 FOIA Request until September 16,
21 2016, approximately four months after the deadlines mandated by FOIA.¹ FEMA made four interim
22 releases for the April 8, 2016 request, wherein FEMA asserted extensive withholdings under FOIA
23
24

25 ¹ FEMA's letter dated September 16, 2016 states that it was the "fourth and final interim response." Use
26 of the word "interim" suggests that FEMA had additional documents to process. Thus it is unclear
27 whether the September 16, 2016 letter was in fact FEMA's final response.

1 exemptions (b)(5) and (b)(6), referred documents to NMFS, and set a search cut-off date of the day the
2 request was made. EcoRights has yet to receive any of the documents referred to NMFS.

3 EcoRights timely appealed FEMA's determination in a letter dated June 27, 2016, wherein
4 EcoRights objected that FEMA had missed statutory deadlines, had made an inadequate search for
5 documents, had improperly withheld documents without adequate justification that the documents are
6 exempt from disclosure under FOIA, and had failed to segregate factual material. On July 15, 2016,
7 EcoRights sent FEMA a supplemental appeal statement alleging that FEMA withheld documents
8 without adequate justification that they were exempt from disclosure under FOIA as required by the new
9 FOIA Improvement Act of 2016. The twenty working day deadline for FEMA to respond to EcoRights'
10 appeal was July 26, 2016. By letter dated July 29, 2016, FEMA denied EcoRights' appeal.

11 On September 14, 2016, Plaintiff filed the Complaint in this case (Dkt. 1). On October 6, 2016,
12 Plaintiff filed its Amended Complaint (Dkt. 10). On October 17, 2016 Plaintiff sent another FOIA
13 request to FEMA, FEMA 2017-FEFO-00124, ("October 17, 2016 FOIA Request"), seeking additional
14 documents relating to the NFIP. On October 19, 2016, Plaintiff sent another FOIA request to FEMA
15 ("October 19, 2016 Request"), which sought additional documents relating to the implementation of the
16 NFIP in Monterey County, California. The FOIA deadline for FEMA to issue a final determination
17 concerning its response to the October 19, 2016 request was December 2, 2016. On November 29, 2016,
18 FEMA issued its final determination on the October 17, 2016 Request, which notified Plaintiff that
19 FEMA had referred 7 pages to NMFS for the latter agency to determine whether to release. NMFS has
20 failed to meet either the 20 or 30 working day FOIA deadline for response to Plaintiff's October 17,
21 2016 FOIA Request.

22 On December 2, 2016, Plaintiff received an interim response letter from FEMA to the October
23 19, 2016 Request, which processed 19 out of 1,182 responsive pages. FEMA redacted portions of 11
24 pages under FOIA exemption (b)(6), and referred 3 pages to the U.S. Fish and Wildlife Service for the
25 latter agency's review and potential release. FEMA's letter stated that "We anticipate the next release of
26 all or a substantial number of the documents will occur in two to three weeks." As December 2, 2016
27 was the deadline for FEMA to have completed its response, FEMA is therefore in violation of FOIA

1 deadlines. On December 8, 2016, Plaintiff is filing a motion and proposed order for leave to file the
2 second amended complaint.

3 **III. ARGUMENT**

4 After a responsive pleading has been filed, a party may amend a pleading “only by leave of court
5 or by written consent of the adverse party; and leave shall be freely given when justice so requires.”
6 FRCP 15(a). This rule that leave to amend shall be freely given is applied with “strong liberality.”
7 *Foman v. Davis*, 371 U.S. 178 (1962); see *DCD Programs, Ltd. V. Leighton*, 833 F.2d 183, 186 (9th Cir.
8 1987); *Morango Band of Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). As the U.S. Court of
9 Appeals for the Ninth Circuit has explained, under FRCP 15(a):

10 Where there is a lack of prejudice to the opposing party and the amended complaint is obviously
11 not frivolous, or made as a dilatory maneuver in bad faith, it is an abuse of discretion to deny
12 such a motion. The purpose of the litigation process is to vindicate meritorious claims.

13 *Howey v. United States*, 481 F.2d 1187, 1190-91 (9th Cir. 1973); see also *Sweaney v. Ada County*,
14 *Idaho*, 119 F.3d 1385, 1392-93 (9th Cir. 1997); *Sierra Club v. Union Oil Co. of California*, 813 F.2d
15 1480, 1493 (9th Cir. 1987), *vacated on other grounds*, 99 L.Ed.2d 264 (1988). Plaintiff must be granted
16 leave to amend its Complaint to add its proposed new FOIA claims under FRCP 15(a) because (1) the
17 new FOIA claims are not frivolous nor futile, (2) Plaintiff is not proceeding in bad faith, and (3),
18 Defendants will not be prejudiced by the Complaint amendment. *E.g.*, *Sweaney*, 119 F.3d at 1392-93.

19 **A. The Proposed Revisions to Existing Claims and Addition of Claims is Neither Frivolous 20 nor Futile.**

21 Plaintiff proposed revisions to existing claims and addition of new claims is meritorious and
22 cannot conceivably be characterized as frivolous. FEMA has continued to be in violation of FOIA in
23 regards to the April 8, 2016 Request, and is now in violation of FOIA over the October 17, 2016
24 Request and October 19, 2016 Request. NMFS similarly is in violation of FOIA in regards to the April
25 8, 2016 Request and October 17, 2016 Request. The standard Plaintiff must meet in this respect is very
26 lenient: “[A] proposed amendment is futile only if no set of facts can be proved under the amendment to
27 the pleadings that would constitute a valid and sufficient claim or defense.” *Miller v. Rykoff-Sexton, Inc.*,
845 F.2d 209, 214 (9th Cir. 1998). Defendants cannot show that Plaintiff can prove no set of facts

1 establishing that FEMA and NMFS have not met FOIA deadlines or complied with other requirements
2 of FOIA.

3 **B. Plaintiff is Not Proceeding in Bad Faith.**

4 Plaintiff has not acted in bad faith in proposing to amend its Complaint, as would be the case
5 if this proposal was part of a series of vexatious amendments meant merely to harass or catch
6 Defendants off-guard or keep meritless claims in court. Instead, Plaintiff seeks leave “to ensure that the
7 claims already presented would be decided on their merits, in furtherance of the very purposes of Rule
8 15.” *Jones v. Bates*, 127 F.3d 839, 847 (9th Cir. 1997). Plaintiff is moving to amend to add additional
9 valid claims to support the relief sought under existing facts already at issue and new, closely related
10 facts.

11 **C. Defendants Will Suffer No Prejudice Due to the Complaint Amendment.**

12 Prejudice to the opposing party for FRCP 15(a) purposes means that the timing of the
13 amendment precludes the Defendants from fairly preparing their defense. *E.g., Howey*, 481 F.2d at
14 1191. The Defendants must be put “to some serious disadvantage,” “it is not enough that [a defendant]
15 advance an imagined grievance or seeks to protect some tactical advantage.” *Hodgson v. Colonnades,*
16 *Inc.* 472 F.2d 42, 48 (5th Cir. 1973). The Defendants can make no showing of prejudice by allowing the
17 Plaintiff’s revisions and additions to be heard in this proceeding.

18 **D. Allowing This Amendment Will Promote Judicial Efficiency.**

19 Finally, the Second Amended Complaint ensures that all of Plaintiff’s claims against the
20 Defendants are encompassed in one lawsuit. The courts would be used more efficiently if Plaintiff is
21 permitted to amend its Complaint rather than requiring Plaintiff to commence a second action against
22 the Defendants for the revised and additional claims.

23 **IV. CONCLUSION**

24 Because Plaintiff’s Second Amended Complaint will foster the determination of the case on the
25 merits and in one action, because leave was sought in a timely fashion which does not Prejudice
26 Defendants and because leave to amend is freely granted, Plaintiff should be granted leave to amend.
27 Plaintiff further suggests that the Court dispense with a hearing on this Motion and grant the Motion on

1 the papers, as it appears likely it will not be opposed.

2
3 Respectfully Submitted,

4 Dated: December 8, 2016

5 

6

Christopher Sproul
7 *Counsel for Ecological Rights Foundation*

EXHIBIT 1

1 Christopher Sproul (State Bar No. 126398)
2 Christopher Hudak (State Bar No. 282283)
3 Danielle Rathje (State Bar No. 300167)
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15 Attorneys for Plaintiff
16 ECOLOGICAL RIGHTS FOUNDATION

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 ECOLOGICAL RIGHTS FOUNDATION, a
20 non-profit corporation,

21 Plaintiff,

22 v.

23 FEDERAL EMERGENCY MANAGEMENT
24 AGENCY, an agency of the Department of
25 Homeland Security, and NATIONAL MARINE
26 FISHERIES SERVICE, an agency of the
27 Department of Commerce,

28 Defendants.

Civil Case No. 16-cv-05254-MEJ

**[PROPOSED] SECOND AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Ecological Rights Foundation (“EcoRights”) alleges as follows:

2 **INTRODUCTION**

3 1. EcoRights amends its First Amended Complaint (Dkt. 10) to: 1) revise the First Claim for
4 Relief to include an allegation that the Federal Emergency Management Agency (“FEMA”) improperly
5 withheld responsive documents for one of the Freedom of Information Act (“FOIA”) requests at issue,
6 2) revise the Third Claim for Relief to allege that FEMA imposed an invalid search cut-off for one of the
7 FOIA requests at issue, and remove claims brought under FEMA agency regulations that will soon be
8 superseded, 3) add a Fourth Claim for Relief regarding FEMA’s failure to timely refer documents to one
9 of it’s sister agencies, including from a FOIA request not addressed in the first amended complaint; 4)
10 add a Fifth Claim for Relief regarding FEMA’s failure to respond to two FOIA requests within FOIA
11 deadlines, including from a FOIA request not addressed in the first amended complaint 5) add a Sixth
12 Claim for Relief regarding National Marine Fisheries Service’s (“NMFS”) failure to make timely
13 determinations on documents referred to them by FEMA, and for failure to promptly provide the
14 documents to EcoRights, including from a FOIA request not addressed in the first amended complaint;
15 and 6) add a Seventh Claim for Relief regarding NMFS’s pattern and practice of failing to timely
16 respond to FOIA requests, particularly those that have been referred to them by other agencies.

17 2. EcoRights brings this action under FOIA, which allows an aggrieved party to seek relief when
18 documents are unlawfully withheld, and authorizes a reviewing court to enjoin the agency from
19 withholding records and to order the production of any agency records improperly withheld from the
20 complainant. 5 U.S.C. § 552(a)(4)(B). EcoRights seeks declaratory and injunctive relief for FOIA
21 violations by FEMA and NMFS.

22 3. At issue in this case are three FOIA requests. The first, dated April 8, 2016 and assigned
23 tracking number FEMA 2016-FEFO-01357 (“April 2016 Request”), is a FOIA request to FEMA
24 seeking documents addressing Endangered Species Act (“ESA”) section 7 consultations (16 U.S.C. §
25 1536) that have been initiated or proposed pertaining to the implementation of the National Flood
26 Insurance Program (“NFIP”) in California; documents concerning any ESA section 10 permits or habitat
27 conservation plans (16 U.S.C. § 1539) that have been initiated or proposed, pertaining to the

1 implementation of the NFIP in California; documents submitted to FEMA by NMFS, U.S. Fish and
2 Wildlife Service (“USFWS”), the California Department of Fish and Wildlife (“CDFW”), or any other
3 State or Federal agency or department pertaining to the ESA and the implementation of the NFIP in
4 California; and documents concerning any ESA section 7 consultations (16 U.S.C. § 1536) that have
5 been initiated or proposed, pertaining to any national level draft or final rule(s) related to the NFIP.

6 4. The second FOIA request at issue, dated October 17, 2016 and assigned tracking number
7 FEMA 2017-FEFO-00124 (“October 17, 2016 Request”), sought the same types of documents as the
8 April 2016 Request, except for documents dated only after April 8, 2016 and with the addition of a
9 request for any materials that would have released to EcoRights in FEMA’s response to EcoRights’
10 April 2016 Request had FEMA considered the FOIA Improvement Act of 2016 to apply, including
11 relevant documents not included in FEMA’s releases to EcoRights or the removal of redactions in
12 documents already released to EcoRights.

13 5. The third FOIA request at issue, dated October 19, 2016 and assigned tracking number FEMA
14 2017-FEFO-00145 (“October 19, 2016 Request”), sought documents addressing ESA section 7
15 consultations (16 U.S.C. § 1536) that have been initiated or proposed pertaining to certain Letters of
16 Map Correction (with Product ID Number and Effective Date), issued for properties in Monterey
17 County, California, through the NFIP; documents submitted to FEMA by NMFS, USFWS, the CDFW,
18 or any other State or Federal agency or department pertaining to the Letters of Map Correction at issue
19 in the request; documents addressing ESA section 7 consultations (16 U.S.C. § 1536) that have been
20 initiated or proposed pertaining to the implementation of the NFIP in Monterey County, California,
21 dated from January 1, 2000 to December 31, 2008; documents submitted to FEMA by NMFS, USFWS,
22 the CDFW, or any other State or Federal agency or department pertaining to ESA section 7
23 consultations (16 U.S.C. § 1536) that have been initiated or proposed pertaining to the implementation
24 of the NFIP in Monterey County, California, dated from January 1, 2000 to December 31, 2008;
25 documents addressing ESA section 10 permits or habitat conservation plans (16 U.S.C. § 1539) that
26 have been initiated or proposed pertaining to the implementation of the NFIP in Monterey County,
27 California, dated from January 1, 2000 to December 31, 2008; any Conditional Letters of Map Revision

1 aggrieved party to seek relief when documents are unlawfully withheld, and authorizes a reviewing
2 court to enjoin the agency from withholding records and to order the production of any agency records
3 improperly withheld from the complainant.

4 10. This Court has personal jurisdiction over FEMA and NMFS, both of which are agencies of the
5 federal government and operating within the United States.

6 **VENUE**

7 11. Venue in the United States District for the Northern District of California is proper under 5
8 U.S.C. section 552(a)(4)(B) because the complainants have their principal place of business in the
9 Northern District, and many of the records sought by complainants are most likely situated in the FEMA
10 office located at 1111 Broadway, Oakland, California, and in the NMFS office located at 777 Sonoma
11 Avenue, Santa Rosa, California--which are located within the Northern District.

12 **INTRADISTRICT ASSIGNMENT**

13 12. Intradistrict assignment of this matter to the San Francisco Division of the Court is
14 appropriate pursuant to Civil Local Rule 3-2(d) because EcoRights' principal counsel resides in San
15 Francisco County, EcoRights' principal place of business is located in Garberville, California and the
16 office of the Deputy U.S. Attorney who is serving as FEMA's counsel and possibly NMFS's in this
17 matter is located in the Federal Building in San Francisco County.

18 **THE PARTIES**

19 13. EcoRights is a non-profit, public benefit corporation, organized under the laws of the State of
20 California, devoted to furthering the rights of all people to a clean, healthful, and biologically diverse
21 environment. To further its environmental advocacy goals, EcoRights actively seeks federal and state
22 agency implementation of state and federal wildlife related laws, and as necessary, directly initiates
23 enforcement actions on behalf of itself and its members.

24 14. Defendant FEMA, an agency of the Department of Homeland Security, is the agency of the
25 United States Government responsible for administering and implementing the National Flood Insurance
26 Program.
27

1 15. Defendant NMFS, a branch of the National Oceanic and Atmospheric Administration, a
2 division of the Department of Commerce, is the agency of the United States Government responsible for
3 administering and implementing the ESA for anadromous fisheries and generally is responsible for the
4 stewardship of the nation's living marine resources and their habitat.

5 **STATUTORY AND REGULATORY BACKGROUND**

6 16. FOIA requires that an agency disclose documents to any person except where the document
7 falls under a specifically enumerated exemption. 5 U.S.C. § 552. The courts have emphasized the
8 narrow scope of these exemptions and “the strong policy of the FOIA that the public is entitled to know
9 what its government is doing and why.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 868
10 (D.C. Cir. 1980).

11 17. When an agency decides to withhold records under a claim of exemption it must notify the
12 person making such request of such determination and the reasons therefor. 5 U.S.C. § 552(a)(6)(A)(i).
13 Government agencies bear the burden of proof to show that any withheld documents are exempt from
14 the duty to disclose. 5 U.S.C. § 522(a)(4)(B).

15 18. On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016. The
16 Act made significant amendments to FOIA, effective as of enactment on June 30, 2016. 5 U.S.C. § 522,
17 § 6; Department of Justice Office of Information Policy Summary of the FOIA Improvement Act of
18 2016, available at <https://www.justice.gov/oip/oip-summary-foia-improvement-act-2016> (“OIP FOIA
19 2016 Summary”). The amendments include changes to the standard by which FEMA must evaluate
20 withholdings. The FOIA Improvement Act of 2016 dictates that agencies shall withhold information
21 only if disclosure would harm an interest protected by an exemption what is referred to as the
22 “foreseeable harm standard.” 5 U.S.C. § 552(a)(8)(A)(i); OIP FOIA 2016 Summary.

23 19. Agencies may not make blanket redactions of the names and contact information of agency
24 employees under Exemption 6 unless the information regards personnel, medical, and similar files the
25 disclosure of which would constitute an invasion of personal privacy. 5 U.S.C. § 552(b)(6).
26 Individualized inquiry, not categorical non-disclosure, is required to balance individual privacy interests
27 with the right of the public to free access to information about its government. 5 U.S.C § 552(b)(6);

1 *American Immigration Lawyers Assn. v. Executive Office for Immigration Review*, 2016 WL 4056405
2 (D.C. Cir. 2016).

3 20. Furthermore, 5 U.S.C. section 552(a)(6)(A)(i) requires that the agency provide enough
4 information, presented with sufficient detail, clarity, and verification, so that the requester can fairly
5 determine what has not been produced and “the reasons therefore.”

6 21. Additionally, FOIA requires an agency to consider partial disclosure whenever the agency
7 determines that full disclosure of a requested record is not possible and to take reasonable steps
8 necessary to segregate and release nonexempt information. 5 U.S.C. § 552(a)(8)(A).

9 22. FOIA also requires that an agency, upon any request for records, shall make the records
10 available promptly. 5 U.S.C. § 552(a)(3)(A). An agency shall make a determination whether to comply
11 with a request within twenty (20) business days after the receipt of the request and shall immediately
12 notify the party making the request of such determination, the reasons for the determination, and the
13 party’s right to appeal. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, the agency may extend the
14 time for the determination, for no more than ten (10) days, by written notice to the party, specifying the
15 reasons for the extension and the date on which the determination is expected to be sent. 5 U.S.C. §
16 552(a)(6)(B)(i). “Unusual circumstances” means (1) the need to search for and collect requested records
17 from field facilities or other establishments separate from the office processing the request; (2) the need
18 to search for, collect, and appropriately examine a voluminous amount of separate and distinct records;
19 or (3) the need for consultation with another agency or agency component having a substantial interest
20 in the determination of the request. *Id.* Consultation with another agency shall be conducted with all
21 practicable speed. 5 U.S.C. § 552(a)(6)(B)(iii)(III).

22 23. Federal agencies are under a duty to conduct a reasonable search for records responsive to a
23 party’s request using methods that can be reasonably expected to produce the information requested to
24 the extent they exist. 5 U.S.C. § 522(a)(3)(C).

25 24. An agency’s process for dealing with FOIA requests constitutes “withholding” if its net effect
26 is to significantly impair the requester’s ability to obtain the records or significantly increase the amount
27

1 of time he or she must wait to obtain them. *McGehee, III v. Central Intelligence Agency*, 697 F.2d 1095,
2 1110 (D.C. Cir. 1983), *vacated in part on other grounds*, 711 F.2d 1076 (1983).

3 **FACTUAL BACKGROUND**

4 **EcoRights' FOIA Requests**

5 25. EcoRights has sent FEMA a series of FOIA requests for documents related to ESA section 7
6 consultations (16 U.S.C. § 1536) over implementation of the NFIP. EcoRights' most recent three FOIA
7 requests are at issue in this case: the April 2016 Request, the October 17, 2016 Request, and the October
8 19, 2016 Request. FEMA has failed to issue final determinations concerning EcoRights' April 2016
9 Request and October 19, 2016 Request within the deadlines mandated by FOIA or to produce
10 documents responsive to these two requests promptly. For the April 2016 Request, FEMA has withheld
11 documents without adequate justification, has failed to segregate factual material, and imposed improper
12 search cut-off dates. For the April 2016 Request and October 17, 2016 Request, FEMA has failed to
13 refer the documents to NMFS in a timely fashion. NMFS has failed to issue final determinations
14 concerning the April 2016 Request and October 17, 2016 Request within the deadline mandated by
15 FOIA or to produce documents responsive to these two requests promptly.

16 26. The records sought by EcoRights are crucial for the public to understand how the NFIP can
17 impact development and wildlife habitat in floodplains and to evaluate how FEMA or NMFS may or
18 may not be fulfilling their obligations under the ESA. As a public interest environmental organization,
19 EcoRights is concerned that because a number of federal courts have already held that FEMA failed to
20 properly consult with NMFS or USFWS over the NFIP in other states, FEMA has similarly not fulfilled
21 its requirements under the ESA in California.

22 27. EcoRights has intended to use the information requested to educate the public about any steps
23 taken by FEMA to comply with the ESA and any USFWS, NMFS, or CDFW considerations of the
24 impacts of the NFIP on listed species. Without this information, EcoRights cannot successfully serve as
25 an effective public interest watchdog ensuring FEMA's or NMFS' compliance with the ESA in
26 California.

27 **EcoRights' April 2016 Request**

1 28. On April 8, 2016, EcoRights' counsel received a letter from FEMA acknowledging receipt of
2 the April 2016 Request (submitted April 8, 2016), which invoked a 10-day extension per 5 U.S.C. §
3 552(a)(6)(B). With the invocation of the ten-day extension, the FOIA deadline for FEMA's final
4 response to the April 2016 Request was May 20, 2016. As detailed further below, FEMA provided a
5 partial release of responsive documents only after the FOIA deadline had passed, and did not provide
6 what might be the final release of documents responsive to the April 2016 Request until September 16,
7 2016, approximately 4 months after the deadline mandated by FOIA.¹

8 ***FEMA's First Interim Response to EcoRights' April 2016 Request***

9 29. In its May 26, 2016 first interim letter responding to the April 2016 Request, FEMA indicated
10 that it had identified 4,267 records responsive to EcoRights' FOIA request, of which FEMA processed
11 500 pages for its first interim release. The letter stated that "FEMA will produce additional document
12 releases approximately every three weeks [which] will comprise approximately 1,000 pages per
13 installment, leaving three to four installments of documents anticipated." The letter indicated that FEMA
14 was granting full access to 4 records, was withholding access in part to 486 pages, and was withholding
15 access in full to 5 pages. FEMA also indicated that it had referred 5 pages to NMFS for the latter agency
16 to review and potentially release.

17 30. FEMA claimed the documents constituted deliberative process, attorney-client, and attorney
18 work product exempt from disclosure pursuant to Exemption 5 and were further exempt from disclosure
19 pursuant to Exemption 6. FEMA did not provide the reasons for withholding documents other than the
20 conclusory assertion that the documents were exempt from disclosure pursuant to Exemption 5 and
21 Exemption 6. FEMA provided no reasons as to why this assertion was ostensibly true nor any
22 explanation of how disclosure of the particular documents would damage the interest protected by the
23 claimed exemption, as required by FOIA. The FOIA Improvement Act of 2016 expressly requires that
24 FEMA can only withhold such information if "the agency reasonably foresees that disclosure would

25 _____
26 ¹ FEMA's letter dated September 16, 2016 states that it was the "fourth and final interim response." Use of the word
27 "interim" suggests that FEMA had additional documents to process. Thus it is unclear whether the September 16, 2016 letter
was in fact FEMA's final response.

1 harm an interest protected by an exemption.” 5 U.S.C § 552(a)(8)(A)(i)(I). On information and belief,
2 EcoRights alleges that there is no such FEMA interest in withholding this information.

3 31. Furthermore, many of the documents FEMA partially released were so heavily redacted that
4 they were of little to no use.

5 32. EcoRights has not received any of the documents FEMA referred to NMFS.

6 33. EcoRights via their public interest counsel at Environmental Advocates timely appealed
7 FEMA’s determination in a letter dated June 27, 2016.

8 ***FEMA’s Second Interim Response to EcoRights’ April 2016 Request***

9 34. In its second interim letter, dated June 29, 2016, responding to the April 2016 Request,
10 FEMA indicated that it made partial and full redactions of 491 documents under Exemption 5 and
11 Exemption 6 but failed to indicate how many of the 491 documents were withheld pursuant to either
12 exemption.

13 35. FEMA stated that of 1,138 pages, only 103 were releasable, portions of 1,010 pages were
14 exempted, and 25 pages were exempted in their entirety under the attorney-client privilege, attorney
15 work product privilege, deliberative process privilege, or Exemption 6.

16 36. FEMA also indicated that its search cut-off date for documents responsive to the April 2016
17 Request was April 8, 2016 (the day the request was submitted), *i.e.*, FEMA had instructed its staff in
18 responding to the April 2016 Request that they should not search for documents generated after April 8,
19 2016.

20 37. FEMA did not provide the reasons for withholding documents other than the conclusory
21 assertion that the documents were exempt from disclosure pursuant to Exemption 5 and Exemption 6.
22 FEMA provided no reasons as to why this assertion was ostensibly true nor any explanation of how
23 disclosure of the particular documents would damage the interest protected by the claimed exemption, as
24 required by FOIA. The FOIA Improvement Act of 2016 expressly requires that FEMA can only
25 withhold such information if “the agency reasonably foresees that disclosure would harm an interest
26 protected by an exemption.” 5 U.S.C § 552(a)(8)(A)(i)(I). On information and belief, EcoRights alleges
27 that there is no such FEMA interest in withholding this information.

1 38. Many of the documents FEMA partially released were so heavily redacted that they were of
2 little to no use.

3 ***EcoRights' Supplemental Appeal Statement Regarding the FOIA Improvement Act***

4 39. EcoRights sent FEMA a supplemental appeal statement dated July 15, 2016 alleging that
5 FEMA withheld documents without adequate justification that they were exempt from disclosure under
6 FOIA as required by the new FOIA Improvement Act of 2016.

7 40. FEMA denied EcoRights' claims by letter dated July 29, 2016. In its denial, FEMA
8 contended that EcoRights' FOIA request "is not subject to the provisions of the FOIA Improvement
9 Act."

10 ***FEMA's Third Interim Letter in Response to EcoRights' April 2016 Request***

11 41. In its third interim letter in response to EcoRights' request, dated July 18, 2016, FEMA
12 indicated that after processing 1,314 pages, 1,022 were releasable in their entirety, portions of 186
13 pages were exempt, 102 pages were being withheld in their entirety, and two pages were referred to
14 NMFS.

15 42. FEMA again claimed the documents constituted deliberative process, attorney-client, and
16 attorney work product exempt from disclosure pursuant to Exemption 5 and were further exempt from
17 disclosure pursuant to Exemption 6. FEMA did not provide the reasons for withholding documents other
18 than the conclusory assertion that the documents were exempt from disclosure pursuant to Exemptions 5
19 and 6. FEMA provided no reasons as to why these assertions were ostensibly true nor any explanation of
20 how disclosure of the particular documents would damage the interest protected by the claimed
21 exemption, as required by FOIA. The FOIA Improvement Act of 2016 expressly requires that FEMA
22 can only withhold such information if "the agency reasonably foresees that disclosure would harm an
23 interest protected by an exemption." 5 U.S.C § 552(a)(8)(A)(i)(I). On information and belief, EcoRights
24 alleges that there is no such FEMA interest in withholding this information. Furthermore, many of the
25 documents FEMA partially released were so heavily redacted that they were of little to no use.

26 43. FEMA also indicated that its search cut-off date for documents responsive to the April 2016
27

1 Request was April 8, 2016 (the day the request was submitted), *i.e.*, FEMA had instructed its staff in
2 responding to the April 2016 Request that they should not search for documents generated after April 8,
3 2016.

4 44. EcoRights has not received any of the documents that FEMA indicated in its July 18, 2016
5 letter that FEMA had referred to NMFS for the latter agency to review and potentially release.

6 ***FEMA's Fourth and Final Interim Letter in Response to Ecoright's April 2016 Request***

7 45. On September 16, 2016, more than five months after EcoRights sent the April 2016 Request,
8 FEMA provided its "Fourth and Final Interim Letter," stating that of 781 pages processed in this fourth
9 interim round of FEMA responses to the Request, it had referred 38 pages to NMFS, determined that
10 564 pages were releasable in their entirety, and that portions of the remaining 178 pages were exempted
11 from release.

12 46. FEMA again claimed the documents constituted deliberative process, attorney-client, and
13 attorney work product exempt from disclosure pursuant to Exemption 5 and were further exempt from
14 disclosure pursuant to Exemption 6. FEMA did not provide the reasons for withholding documents other
15 than the conclusory assertion that the documents were exempt from disclosure pursuant to Exemption 5
16 and Exemption 6. FEMA provided no reasons as to why these assertions were ostensibly true nor any
17 explanation of how disclosure of the particular documents would damage the interest protected by the
18 claimed exemption, as required by FOIA. The FOIA Improvement Act of 2016 expressly requires that
19 FEMA can only withhold such information if "the agency reasonably foresees that disclosure would
20 harm an interest protected by an exemption." 5 U.S.C § 552(a)(8)(A)(i)(I). On information and belief,
21 EcoRights alleges that there is no such FEMA interest in withholding this information.

22 47. FEMA also indicated that its search cut-off date for documents responsive to the April 2016
23 Request was April 8, 2016 (the day the request was submitted), *i.e.*, FEMA had instructed its staff in
24 responding to the April 2016 Request that they should not search for documents generated after April 8,
25 2016.

26 48. Many of the documents FEMA partially released were so heavily redacted that they were of
27

1 little to no use; many documents included only partial e-mail chains or parts of emails, including almost
2 no attachments.

3 49. NMFS has also failed to provide EcoRights with any of the 38 documents that FEMA and
4 indicated in its September 16, 2016 letter that FEMA has referred to NMFS for the latter agency to
5 review and potentially release. On information and belief, EcoRights alleges that FEMA has not
6 complied with 5 U.S.C. § 552(b)'s requirement that when asserting a document contains materials
7 exempt from disclosure the federal agency must segregate any purely factual material not exempt from
8 disclosure. FEMA's FOIA determination letter makes no mention of any attempt by FEMA to review
9 the documents for segregable factual information.

10 50. In its four interim releases of documents responsive to the April 2016 Request, FEMA
11 extensively invoked Exemption 5 for documents that relate to FEMA's rulemaking on the NFIP.
12 However, FEMA has already twice waived confidentiality to at least some of the documents that pertain
13 to this rulemaking, and has thus improperly redacted these documents.

14 51. First, FEMA effectively disclosed many of the documents' contents in other public
15 communications about its policies, such as numerous public documents that have already revealed that
16 NMFS and FEMA disagree whether FEMA must consult under ESA § 7 with NMFS over the NFIP.
17 *See, e.g.*, "The Changing Landscape of Flood Plains," Environmental and Land Use Law, Sept.
18 2014., Vol. 40, No. 2 at page 5, *available at* <http://www.wsba.org/~media/Files/Legal>
19 [%20Community/Sections/ELUL/Newsletters/September%202014.ashx](http://www.wsba.org/~media/Files/Legal%20Community/Sections/ELUL/Newsletters/September%202014.ashx) (accessed 7/12/16); "Guidance
20 for Flood Risk Analysis and Mapping: Documentation of Endangered Species Act Compliance for
21 Conditional Letters of Map Change," FEMA, Nov. 2015, *available at* [http://www.fema.gov/media-](http://www.fema.gov/media-library-data/1449865883913-95472b08561a5a14738b38683ec256c7/ESA_Guidance_Nov_2015.pdf)
22 [library-data/1449865883913-95472b08561a5a14738b38683ec256c7/ESA_Guidance_Nov_2015.pdf](http://www.fema.gov/media-library-data/1449865883913-95472b08561a5a14738b38683ec256c7/ESA_Guidance_Nov_2015.pdf)
23 (accessed 7/12/16); NMFS Biological Opinion on the NFIP in Oregon (at page 2 pointing out that
24 FEMA engaged in ESA section 7 consultation on aspect of NFIP in response to federal court order),
25 *available at* [http://www.westcoast.fisheries.noaa.gov/publications/habitat/2016_04-14_fema_nfip_nwr-](http://www.westcoast.fisheries.noaa.gov/publications/habitat/2016_04-14_fema_nfip_nwr-2011-3197.pdf)
26 [2011-3197.pdf](http://www.westcoast.fisheries.noaa.gov/publications/habitat/2016_04-14_fema_nfip_nwr-2011-3197.pdf) (accessed 7/12/16).

27 52. Second, FEMA has also waived confidentiality of documents pertaining to the conflict

1 between NMFS and FEMA over FEMA's duties under the ESA since FEMA has already disclosed un-
2 redacted documents on the issue to EcoRights in prior FOIA releases, which are the subject of an
3 ongoing "clawback" dispute in *EcoRights v. FEMA*, 4:15-cv-04068-DMR (N.D. Cal). In the prior
4 releases, FEMA directly released documents detailing the dispute between FEMA and NMFS to
5 EcoRights, and NMFS published online documents referred to NMFS by FEMA.

6 53. FEMA has also redacted names in released documents in its four interim releases of
7 documents responsive to the April 2016 Request under a claim of Exemption 6. However, on the face of
8 the documents, there is nothing to show that names redacted fall under any privacy protections. On
9 information and belief, EcoRights alleges that the extensive redactions of third-party names have not
10 been the result of a thoughtful process, but rather have been applied in a blanket fashion. The FOIA
11 Improvement Act of 2016 expressly requires that FEMA can only withhold such information if "the
12 agency reasonably foresees that disclosure would harm an interest protected by an exemption." 5 U.S.C
13 § 552(a)(8)(A)(i)(I). On information and belief, EcoRights alleges that there is no such FEMA interest in
14 withholding these documents.

15 54. The redaction of full names in FOIA documents dramatically reduces the utility of released
16 documents by hampering efforts by requesters such as EcoRights to construct an accurate narrative. A
17 given document might appear entirely cryptic until its context can be seen as part of a chain of related
18 documents, and it is frequently impossible or exceedingly difficult to create a chain of related documents
19 without knowing who generated and received them.

20 55. In its second interim response letter, FEMA explained that it was imposing a search cutoff
21 date of April 8, 2016 the date the request was made. FEMA set an improper cutoff date by looking
22 only for documents in its possession as of the date it received the April 2016 Request, not the date it
23 actually conducts each of its searches. This is problematic because now that it has taken four
24 installments and more than five months for FEMA to respond to EcoRights' request, all of the responses
25 are now more than 5 months out of date. This problem is further exacerbated by the fact that NMFS has
26 failed to provide any of the documents that FEMA allegedly referred to NMFS.

27 56. Ultimately, FEMA's methodology of utilizing an improper cutoff date effectively precludes

1 EcoRights and other public interest organizations and individuals from promptly obtaining current
2 documents addressing the topics of its FOIA request and constitutes an unjustifiable withholding under
3 FOIA.

4 **EcoRights' October 17, 2016 Request**

5 57. On October 18, 2016, EcoRights' counsel received a letter from FEMA acknowledging
6 receipt of the October 17, 2016 Request, which invoked a 10-day extension of the deadline to respond to
7 the October 17, 2016 Request per 5 U.S.C. § 552(a)(6)(B). FEMA issued its final determination on the
8 October 17, 2016 Request on November 29, 2016, which notified Plaintiff that FEMA had referred 7
9 pages to NMFS for the latter agency to determine whether to release. The 20 working day deadline for
10 NMFS to have responded to the referral was November 14, 2016 or November 29, 2016 if a 10 working
11 day extension was invoked. To date, Plaintiff has not received any communication from NMFS
12 regarding the request, and either 1) NMFS has failed to meet either the 20 or 30 working day FOIA
13 deadline for response to Plaintiff's October 17, Request, or 2) FEMA never forwarded the referral to
14 NMFS in violation of FOIA.

15 **EcoRights' October 19, 2016 Request**

16 58. On October 20, 2016, EcoRights' counsel received a letter from FEMA acknowledging
17 receipt of the October 19, 2016 Request, which invoked a 10-day extension of the deadline to respond to
18 the Request per 5 U.S.C. § 552(a)(6)(B). With the invocation of the 10-day extension, the FOIA
19 deadline for the October 19, 2016 Request was December 2, 2016. On December 2, 2016, Plaintiff
20 received an interim response letter from FEMA to the October 19, 2016 Request, which processed 19
21 out of 1,182 responsive pages. FEMA released five pages in their entirety, redacted portions of 11 pages
22 on contention that they were exempt from release pursuant to Exemption 6, and referred 3 pages to U.S.
23 Fish and Wildlife Service for the latter agency to review and potentially release. FEMA's letter stated
24 that "We anticipate the next release of all or a substantial number of the documents will occur in two to three
25 weeks." FEMA has not yet provided a final determination with respect to whether it will release documents
26 responsive to the October 19, 2016 Request. As December 2, 2016 was the deadline for FEMA to have
27 completed its response, FEMA is in violation of FOIA deadlines.

1 59. In its first interim release of documents responsive to the October 19, 2016 Request, FEMA
2 again redacted names in released documents under a claim of Exemption 6. FEMA did not provide the
3 reasons for withholding documents other than the conclusory assertion that the documents were exempt
4 from disclosure pursuant to FOIA Exemption 6. FEMA provided no reasons as to why this assertion was
5 ostensibly true nor any explanation of how disclosure of the particular documents would damage the
6 interest protected by the claimed exemption, as required by FOIA. On the face of the documents, there is
7 nothing to show that the redacted names fall under any privacy protections. On information and belief,
8 EcoRights alleges that the redactions of third-party names have again not been the result of a thoughtful
9 process, but rather have been applied in a blanket fashion. The FOIA Improvement Act of 2016
10 expressly requires that FEMA can only withhold such information if “the agency reasonably foresees
11 that disclosure would harm an interest protected by an exemption.” 5 U.S.C § 552(a)(8)(A)(i)(I). On
12 information and belief, EcoRights alleges that there is no such FEMA interest in withholding this
13 information.

14 **FIRST CLAIM FOR RELIEF**
15 **FEMA Violation of FOIA**
16 **5 U.S.C. §§ 552(a)**

17 **Request for Declaratory Relief and Injunction to Compel FEMA to Comply with FOIA**
18 **Requirement to Release Documents Unless a Valid Exemption Applies**

19 60. EcoRights reasserts and realleges the preceding paragraphs above.

20 61. FEMA has violated 5 U.S.C. § 552(a)(8)(A) by withholding documents under invalid and
21 unjustified claims of exemption under Exemption 5 and Exemption 6. FEMA may not withhold
22 documents unless foreseeable harm will occur to an interest protected by an enumerated exemption. 5
23 U.S.C. § 552(a)(8)(A)(i). Exemptions are read narrowly and FEMA bears the burden of proving
24 exemptions apply, which it has failed to do. 5 U.S.C. § 552(a)(4)(b). FEMA has violated FOIA by
25 failing to promptly produce all documents responsive to EcoRights’ April 2016 Request and October 19,
26 2016 Request not subject to a valid FOIA exemption. 5 U.S.C. § 552(a)(3)(A).

27 62. Furthermore, 5 U.S.C. section 552(a)(6)(A)(i) “requires that the agency provide enough

1 information, presented with sufficient detail, clarity, and verification, so that the requester can fairly
2 determine what has not been produced and why, and the court can decide whether the exemptions
3 claimed justify the nondisclosure.” When an agency invokes any of the FOIA exemptions, the agency
4 must also explain its reasons for withholding documents. FEMA has not complied with these
5 requirements.

6 63. Furthermore, FEMA violated FOIA by improperly withholding responsive documents,
7 particularly from the fourth interim release from the April 2016 Request. There are numerous examples
8 in the fourth interim release from the April 2016 Request where FEMA did not include attachments to
9 emails that were clearly pertinent to the April 2016 Request. Moreover, there are numerous examples
10 from the fourth interim release of the April 2016 Request where FEMA did not release complete email
11 chains which, on information and belief, included documents responsive to the April 2016 Request.

12 64. EcoRights has constructively exhausted its administrative remedies given FEMA's failure to
13 provide a final determination for the April 2016 Request or October 19, 2016 Request within FOIA's
14 statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

15 **SECOND CLAIM FOR RELIEF**
16 **FEMA Violation of 5 U.S.C. § 552(a)(8)(A)(ii)**

17 **Request for Declaratory Relief and Injunction to Compel FEMA to Comply with FEMA's**
18 **Requirement to Segregate Factual and Exempted Material**

19 65. EcoRights reasserts and realleges all the preceding paragraphs above.

20 66. On information and belief, EcoRights alleges that FEMA has violated 5 U.S.C. §
21 552(a)(8)(A)(ii) in failing to segregate any factual material contained within the documents requested by
22 EcoRights' April 2016 Request from any materials that may be withheld under a valid claim of
23 exemption.

24 67. EcoRights has constructively exhausted its administrative remedies given FEMA's failure to
25 provide a final determination for the April 2016 Request and October 19, 2016 Request within FOIA's
26 statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

THIRD CLAIM FOR RELIEF
FEMA Violation of FOIA
5 U.S.C. § 552

**Request for Declaratory Relief Establishing that FEMA
Has Employed Improper Search Cut-Off Dates that Violate FOIA**

68. EcoRights reasserts and realleges all the preceding paragraphs above.

69. FEMA has violated 5 U.S.C. § 552 by imposing an invalid cut-off date for the April 2016 Request that constitute an unjustified withholding of relevant information and delay the release of current information relevant to requests. By applying a search cut-off date of the date of the request despite not providing what is purportedly the final release over 5 months later, Plaintiff was precluded from receiving up-to-date information.

70. EcoRights has constructively exhausted its administrative remedies given FEMA's failure to provide a final determination for the April 2016 Request within FOIA's statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

FOURTH CLAIM FOR RELIEF
FEMA Violation of
5 U.S.C. §§ 552

**Request for Declaratory and Injunctive Relief Compelling FEMA
To Complete Delayed Referrals of FOIA Requests**

71. EcoRights reasserts and realleges all the preceding paragraphs above.

72. On information and belief, FEMA has violated 5 U.S.C. § 552 by delaying referrals of documents from the April 2016 Request and October 17, 2016 Request to NMFS.

FIFTH CLAIM FOR RELIEF
FEMA Violation of
5 U.S.C. §§ 552(a) and (b)

**Request for Declaratory Relief and Injunction to Compel FEMA
To Comply with FOIA Deadlines and Produce Illegally Withheld Records**

73. EcoRights reasserts and realleges all the preceding paragraphs above.

74. FEMA has violated 5 U.S.C. §§ 552(a)(6)(A) and (B) by failing to provide final

1 determinations concerning the April 2016 Request and October 19, 2016 Request within the statutory
 2 deadlines. 5 U.S.C. § 552(a)(6)(A)(i) is plain: within 20 working days of the date that a FOIA request is
 3 received federal agencies must provide a determination that (1) informs the requester as to the
 4 disposition of its request, *i.e.*, whether documents will be provided or withheld and if the latter, why, and
 5 (2) that informs the requester of a right to appeal any decision not to provide requested documents.
 6 Federal agencies at most can extend this 20 working day deadline by an additional 10 working days by
 7 informing the requester in writing (1) that "unusual circumstances" necessitate such an extension and (2)
 8 when the agency will respond. 5 U.S.C. § 552(a)(6)(B)(i). The statutory deadline for FEMA's
 9 determination on EcoRights' April 2016 Request was May 20, 2016, which includes the 10-day "unusual
 10 circumstances" extension. FEMA provided a partial release six days after the deadline had passed, and
 11 did not provide what might be the final release until September 16, 2016, approximately 4 months after
 12 the deadline. The statutory deadline for FEMA's determination on EcoRights' October 19, 2016 Request
 13 was December 2, 2016, which includes the 10 working day "unusual circumstances" extension. FEMA
 14 provided a partial release on the day of the deadline, while stating that "We anticipate the next release of
 15 all or a substantial number of the documents will occur in two to three weeks." FEMA has thus violated
 16 FOIA's statutory deadlines for responding to the April 2016 Request and October 19, 2016 Request.

17 75. FEMA has violated FOIA by failing to "promptly" produce all documents responsive to the
 18 April 2016 Request and October 19, 2016 Request not subject to a lawful FOIA exemption, as the final
 19 determinations are overdue. 5 U.S.C. § 552(a)(3)(A).

20 **SIXTH CLAIM FOR RELIEF**

21 **NMFS Violation of FOIA**

22 **5 U.S.C. §§ 552(a)**

23 **Request for Declaratory Relief and Injunction to Compel NMFS
 24 To Comply with FOIA Deadlines and Produce Illegally Withheld Records**

25 76. EcoRights reasserts and realleges all the preceding paragraphs above.

26 77. NMFS has violated 5 U.S.C. §§ 552(a)(6)(A) by failing to provide final
 27 determinations concerning documents referred to them by FEMA within the statutory deadlines,
 pertaining to the April 2016 Request and the October 17, 2016 Request. 5 U.S.C. § 552(a)(6)(A)(i) is

1 plain: within 20 working days of the date that a FOIA request is received federal agencies must provide
2 a determination that (1) informs the requester as to the disposition of its request, *i.e.*, whether documents
3 will be provided or withheld and if the latter, why, and (2) that informs the requester of a right to appeal
4 any decision not to provide requested documents. Federal agencies at most can extend this 20 working
5 day deadline by an additional 10 working days by informing the requester in writing (1) that "unusual
6 circumstances" necessitate such an extension and (2) when the agency will respond. 5 U.S.C. §
7 552(a)(6)(B)(i).

8 78. The documents referred to NMFS by FEMA from the April 2016 Request were due 20
9 working days from April 8, 2016, on May 5, 2016. However, to date EcoRights has received no
10 communication from NMFS on this referral and NMFS is therefore in violation of 5 U.S.C. §
11 552(a)(6)(A)(i).

12 79. In the alternative, the 20 working day deadline for NMFS to respond to the April 2016
13 Request began on the date that NMFS was first made aware of the referral. On information and belief,
14 EcoRights believes that it has been more than 20 working days since that date.

15 80. The documents referred to NMFS by FEMA from the October 17, 2016 Request were due 20
16 working days later, on November 29, 2016. However, to date EcoRights has received no communication
17 from NMFS on this referral and NMFS is therefore in violation of 5 U.S.C. § 552(a)(6)(A)(i).

18 81. In the alternative, the 20 working day deadline for NMFS to respond to the October 17, 2016
19 Request began on the date that NMFS was first made aware of the referral. On information and belief,
20 EcoRights believes that it has been more than 20 working days since that date.

21 82. NMFS has therefore failed to provide its final determinations within FOIA's statutory time
22 limits.

23 83. NMFS has also violated FOIA by failing to "promptly" produce the referred documents at
24 issue, because it failed to complete its document productions of the documents referred to them by
25 FEMA, which are now well overdue. 5 U.S.C. § 552(a)(3)(A).

1 provide final determinations concerning documents referred to them by FEMA within the statutory
2 deadlines; failing to promptly produce responsive documents; and engaging in a pattern and practice of
3 illegally delaying final determinations for FOIA requests, particularly with regards to documents that
4 have been referred to NMFS by other agencies.

5 d. An injunction pursuant to 5 U.S.C. § 552(a)(4)(B) ordering FEMA to: immediately provide
6 EcoRights with detailed, legally adequate explanations for the withholding of any and all documents or
7 portions of documents responsive to EcoRights' April 2016 Request and October 19, 2016 Request;
8 segregate any factual material contained within the documents requested by EcoRights' April 2016
9 Request; immediately produce all documents that have been illegally withheld; immediately refer any
10 documents from the April 2016 Request and October 19, 2016 Request not already referred to NMFS;
11 immediately produce final determinations for the April 2016 Request and October 19, 2016 Request in
12 accordance with FOIA's statutory deadlines; promptly produce documents responsive to the April 2016
13 Request and October 19, 2016 Request.

14 f. An injunction pursuant to 5 U.S.C. § 552(a)(4)(B) ordering NMFS to: immediately provide its
15 determinations on documents referred to it by FEMA pertaining to the April 2016 Request and October
16 17, 2016 Request and promptly produce all documents in its possession responsive to these requests;
17 immediately provide EcoRights with a detailed, legally adequate explanation for the withholding of any
18 documents or portions of documents responsive to the April 2016 Request and October 17, 2016
19 Request; and cease its pattern and practice of illegally delaying final determinations for FOIA requests,
20 particularly with regards to documents that have been referred to NMFS by other agencies.

21 g. An award of attorney's fees and costs to EcoRights pursuant to 5 U.S.C. § 552(a)(4)(E); and

22 h. Such other and further relief as this Court deems just and proper.

23 Respectfully Submitted,

24 Dated: December 8, 2016

25 By:



26 Christopher Sproul
27 *Counsel for Ecological Rights Foundation*

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, December 12, 2016 7:26 AM
To: Martin, Lisa (Federal)
Cc: David Bedell - NOAA Federal; Robert Hembrook - NOAA Federal; Robert Swisher - NOAA Federal; Sarah Brabson - NOAA Federal; Lola Stith - NOAA Affiliate; Dennis Morgan - NOAA Federal; Stefan Leeb - NOAA Federal
Subject: Re: DLP Tool Implementation
Attachments: NOAA DLPBroadcastMessage.docx; NOAA DLP Plan Final signed.pdf

Good Morning Lisa,

(b)(5)
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 5:40 PM, Martin, Lisa (Federal) <LMartin1@doc.gov> wrote:

Hi Mark,

(b)(5)
[Redacted]

[Redacted] Please provide this information no later than 12:00 noon on Monday, December 12, 2016.

Thanks,

Lisa

Lisa J. Martin

Lisa J. Martin

Deputy Director of Departmental Privacy Operations

U.S. Department of Commerce

Office of Privacy and Open Government

Office: [\(202\) 482-2459](tel:(202)482-2459)

Email: LMartin1@doc.gov

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800-53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800-53A to develop their own assessment procedures.

- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

GOLDSTEIN.ZACHARY.G.1228698985
ARY.G.1228698985

Digitally signed by
GOLDSTEIN.ZACHARY.G.1228698985
DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn GOLDSTEIN.ZACHARY.G.1228698985
Date: 2016.08.30 15:28:33 -04'00'

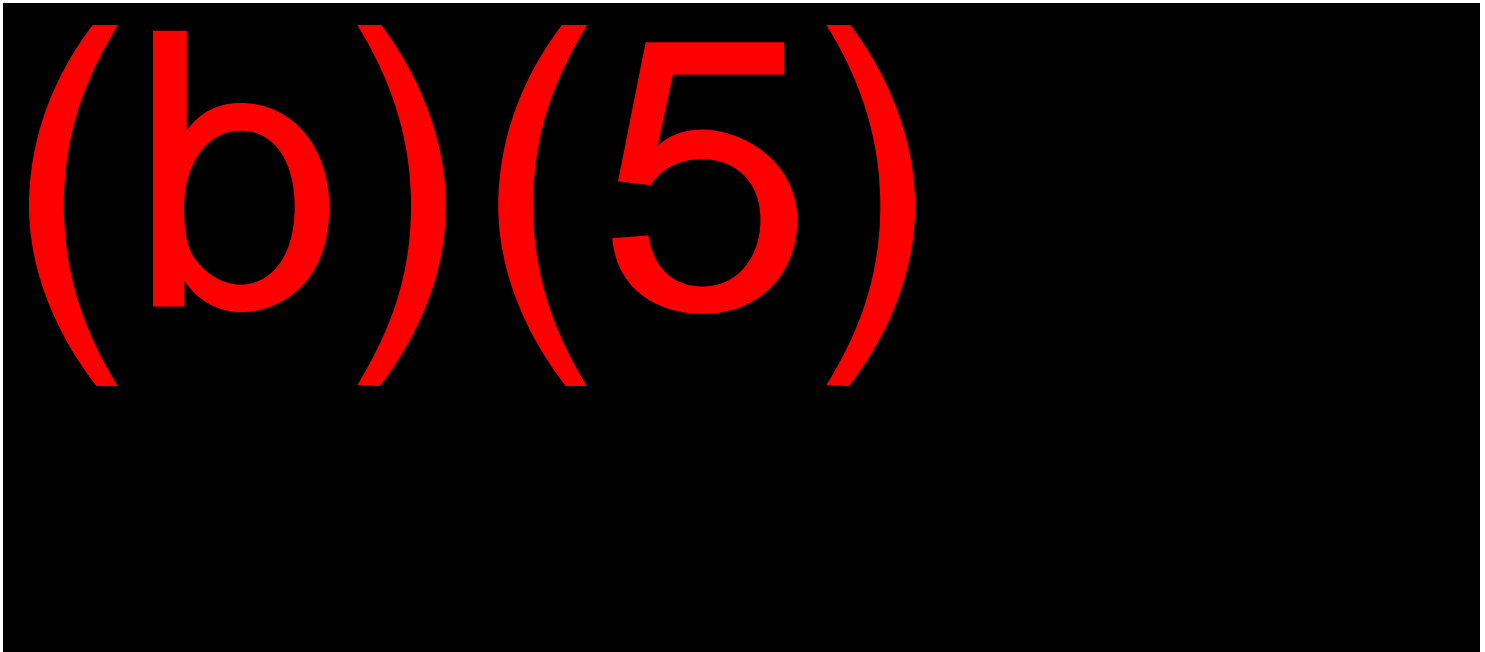
Zachary Goldstein, NOAA CIO

(b) (5)

(b) (5)

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
Sent: Monday, December 12, 2016 8:05 AM
To: Lola Stith - NOAA Affiliate
Cc: Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Good morning Lola,



Thank you,

Lorna

On Fri, Dec 9, 2016 at 10:41 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Thanks again!

On Fri, Dec 9, 2016 at 10:26 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Lorna (b)(5)

[Redacted]

[Redacted]

[Redacted]

Lola

On Fri, Dec 9, 2016 at 9:49 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Ok, thank you.

On Friday, December 9, 2016, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Lorna (b)(5)

Lola

On Fri, Dec 9, 2016 at 8:15 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Lola,

(b)(5)

Thank you,

Lorna

On Thu, Dec 8, 2016 at 11:34 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:31 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

(b)(5)

Lola

On Thu, Dec 8, 2016 at 11:23 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:07 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Question,

(b)(5)

[REDACTED]

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

[REDACTED]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 8:34 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Lola/Mark,

The OIG docs were approved for the 2nd interim release by the AA on 11/7. I am working

(b)(5)

Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:

Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>

To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>

Sent: Fri, Nov 18, 2016 4:29 pm

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager
Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Wednesday, November 02, 2016 1:51 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Sent: Tue, Oct 18, 2016 1:39 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager
Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Tuesday, October 18, 2016 1:15 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>

Sent: Tue, Oct 18, 2016 12:58 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

*Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce*

Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

4. "I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.”

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday – Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross

*Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov*

From: FOIA Office - NOAA Service Account [<mailto:foia@noaa.gov>]

Sent: Friday, October 14, 2016 2:20 PM

To: Scott Doyle

Cc: Lorna Martin-Gross - NOAA Federal

Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?
3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.
4. I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>
To: scottdoyle137 <scottdoyle137@aol.com>
Sent: Thu, Sep 1, 2016 9:08 am
Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvement Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff
NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

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Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

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Lola Stith

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(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

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Ms. Lorna Martin-Gross

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Ms. Lorna Martin-Gross

Records Manager

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NOAA Fisheries

U.S. Department of Commerce

Office: 301-427-8244

lorna.martin-gross@noaa.gov

(b)(5)

(b)(5)

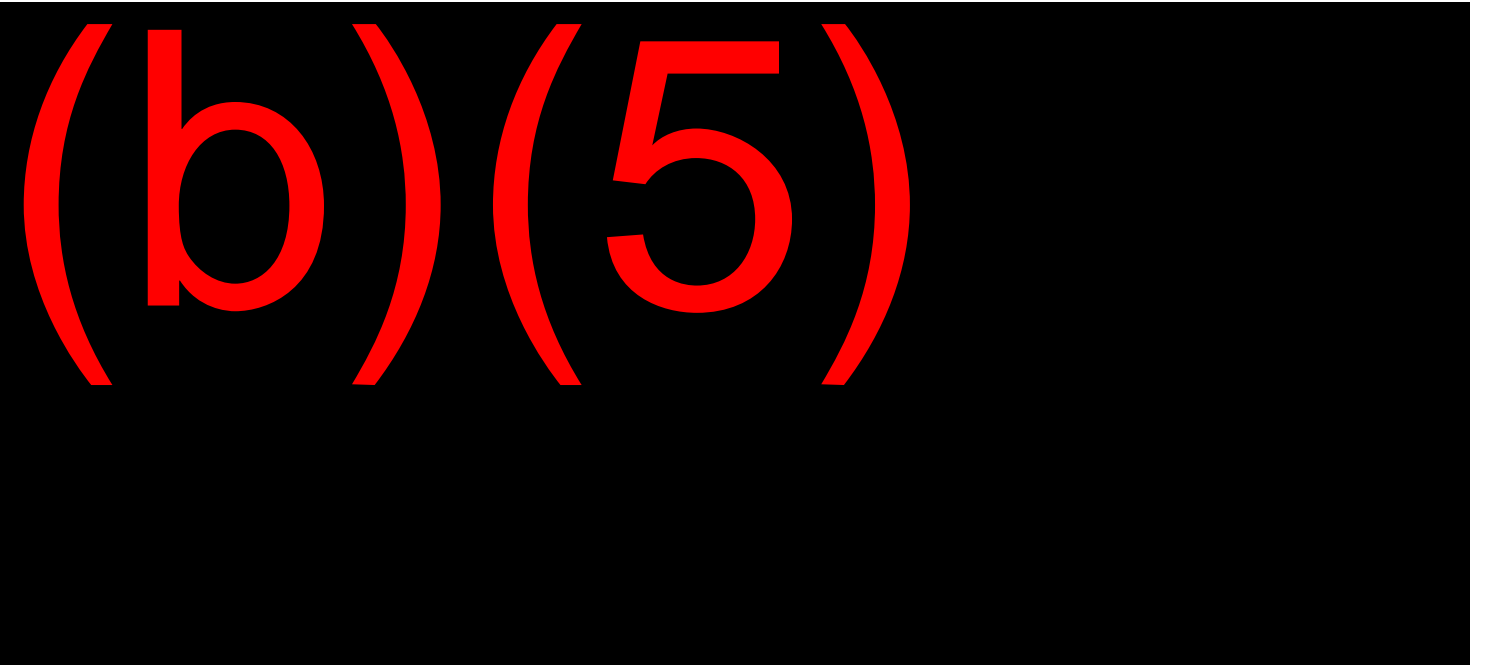
From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Monday, December 12, 2016 3:08 PM
To: Lorna Martin-Gross - NOAA Federal
Cc: Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hi Lorna (b)(5) [REDACTED].

Lola

On Mon, Dec 12, 2016 at 8:05 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Good morning Lola,



Thank you,

Lorna

On Fri, Dec 9, 2016 at 10:41 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Thanks again!

On Fri, Dec 9, 2016 at 10:26 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Lorna (b)(5) [REDACTED]
[REDACTED]

[REDACTED].

Lola

On Fri, Dec 9, 2016 at 9:49 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Ok, thank you.

On Friday, December 9, 2016, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Lorna (b)(5)

Lola

On Fri, Dec 9, 2016 at 8:15 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Lola,

(b)(5)

(b)(5)

Thank you,

Lorna

On Thu, Dec 8, 2016 at 11:34 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

On Thu, Dec 8, 2016 at 11:31 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

(b)(5)

Lola

On Thu, Dec 8, 2016 at 11:23 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:07 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Question,

(b)(5)
[Redacted]
[Redacted]
[Redacted]?

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
(b)(5)
[Redacted].

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 8:34 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Lola/Mark,

(b)(5)
[Redacted]?

Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:
Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>

To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>

Sent: Fri, Nov 18, 2016 4:29 pm
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Wednesday, November 02, 2016 1:51 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Sent: Tue, Oct 18, 2016 1:39 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Tuesday, October 18, 2016 1:15 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>

Sent: Tue, Oct 18, 2016 12:58 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

*Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230*

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,*
- our response to your request,*
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.*
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.*

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

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The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

*Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov*

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

4. "I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require."

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday - Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross

*Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov*

From: FOIA Office - NOAA Service Account [<mailto:foia@noaa.gov>]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?
3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.
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If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>
To: scottdoyle137 <scottdoyle137@aol.com>
Sent: Thu, Sep 1, 2016 9:08 am
Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

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Mark Graff
NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c **(b)(6)**)

lola.m.stith@noaa.gov

--

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lorna.martin-gross@noaa.gov

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Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6))
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--

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U.S. Department of Commerce
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lorna.martin-gross@noaa.gov

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NOAA Fisheries
U.S. Department of Commerce
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lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [REDACTED])
lola.m.stith@noaa.gov

(b)(5)

(b)(5)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, December 13, 2016 10:21 AM
To: Purvis, Catrina; CPO
Cc: Sarah Brabson - NOAA Federal; Robert Swisher - NOAA Federal; Martin, Lisa
Subject: NOAA0201
Attachments: NOAA0201 PTA 120616 v3 DP mhg.pdf

Good Morning Catrina,

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [Redacted] (C)

**U.S. Department of Commerce
National Oceanic and Atmospheric Administration
(NOAA)**



**Privacy Threshold Analysis
for the
Web Operations Center (NOAA0201)**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA/Web Operations Center

Unique Project Identifier: 006-000351100 00-48-03-17-01-00

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose: *Provide a general description of the information system and its purpose in a way that a non-technical person can understand.*

The E-Government Act of 2002 defines “information system” by reference to the definition section of Title 44 of the United States Code. The following is a summary of the definition: “Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. See: 44. U.S.C. § 3502(8).

The Web Operations Center (WOC) is a diverse information technology services provider to Line and Staff Offices within NOAA. The WOC provide a wide range of information technology services and functions which include high availability, scalability, redundancy, clustering, and high performance computing to replicate and distributed general information as well as critical time sensitive life and property information to the general public and meteorology community.

The services and functions of the information system technology have been broken down into four (4) core services and functions: WOC Domain Name System Services (WOCDNSS), WOC Information Sharing Services (WOCISS), WOC Adoptive System Framework (WOCASF), and WOC Collaboration Services. These services and functions make up the subsystems within NOAA0201. Each subsystem has a different FIPS 199 security categorization as described in the NOAA0201 FIPS 199 Security Categorization document. NIST SP 300-37 rev1 describes how various independent subsystems could be grouped together for purpose of risk management into more comprehensive system (system of systems).

The WOC systems are physically located at 8 NOAA datacenters (W1: Silver Spring, Maryland W2: Largo, Maryland W3: Norman, Oklahoma W4: Boulder, Colorado W5: Fort Worth, Texas and W6: Seattle, Washington, W7 Ashville, NC, W8 Fairmont, WVA).

Note: NOAA0201 has been assessed on 1/12/2016 using NIST 800-53 Rev 4.

Questionnaire:

1. What is the status of this information system?

 This is a new information system. *Continue to answer questions and complete certification.*

 x This is an existing information system with changes that create new privacy risks.
Complete chart below, continue to answer questions, and complete certification.

Changes That Create New Privacy Risks (CTCNPR)					
a. Conversions		d. Significant Merging	x	g. New Interagency Uses	
b. Anonymous to Non-Anonymous		e. New Public Access		h. Internal Flow or Collection	
c. Significant System Management Changes		f. Commercial Sources		i. Alteration in Character of Data	
j. Other changes that create new privacy risks (specify):					

In 2016, the Message Operations Center (NOAA0300) was decommissioned and was combined into NOAA0201.

 This is an existing information system in which changes do not create new privacy risks. *Continue to answer questions, and complete certification.*

Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states “Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary.” Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

 Yes. *Please describe the activities which may raise privacy concerns.*

 x No

2. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: “For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. "Commercial" is not confined to records that reveal basic commercial operations" but includes any records [or information] in which the

submitter has a commercial interest" and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.)."

___ Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

___ Companies

___ Other business entities

 x No, this IT system does not collect any BII.

3. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc..."

___ Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

 x DOC employees

 x Contractors working on behalf of DOC

___ Members of the public

___ No, this IT system does not collect any PII.

If the answer is "yes" to question 4a, please respond to the following questions.

4b. Does the IT system collect, maintain, or disseminate PII other than user ID?

 x Yes, the IT system collects, maintains, or disseminates PII other than user ID.

No, the user ID is the only PII collected, maintained, or disseminated by the IT system.

4c. Will the purpose for which the PII is collected, stored, used, processed, disclosed, or disseminated (context of use) cause the assignment of a higher PII confidentiality impact level?

Examples of context of use include, but are not limited to, law enforcement investigations, administration of benefits, contagious disease treatments, etc.

Yes, the context of use will cause the assignment of a higher PII confidentiality impact level.

No, the context of use will not cause the assignment of a higher PII confidentiality impact level.

If any of the answers to questions 2, 3, 4b, and/or 4c are “Yes,” a Privacy Impact Assessment (PIA) must be completed for the IT system. This PTA and the approved PIA must be a part of the IT system’s Assessment and Authorization Package.

CERTIFICATION

X I certify the criteria implied by one or more of the questions above **apply** to the [IT SYSTEM NAME] and as a consequence of this applicability, I will perform and document a PIA for this IT system.

I certify the criteria implied by the questions above **do not apply** to the [IT SYSTEM NAME] and as a consequence of this non-applicability, a PIA for this IT system is not necessary.

Name of Information System Security Officer (ISSO) or System Owner (SO):

David J. Skiffington

Signature of ISSO or SO: SKIFFINGTON.DAVID.1374262730 Digitally signed by SKIFFINGTON.DAVID.1374262730
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=CONTRACTOR
cn=SKIFFINGTON.DAVID.1374262730
Date: 2016.12.07 08:01:42 -05'00' Date: _____

Name of Information Technology Security Officer (ITSO): Jean Apedo

Signature of ITSO: APEDO.JEAN.1188076064 Digitally signed by APEDO.JEAN.1188076064
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER,
cn=APEDO.JEAN.1188076064
Date: 2016.12.08 13:07:33 -05'00' Date: _____

Name of Authorizing Official (AO): Douglas Perry

Signature of AO: PERRY.DOUGLAS.A.1365847270 Digitally signed by PERRY.DOUGLAS.A.1365847270
Date: 2016.12.09 15:43:09 -05'00'

Name of Bureau Chief Privacy Officer (BCPO): MARK GRAFF

Signature of BCPO: GRAFF.MARK.HYRUM.1514447892 Digitally signed by GRAFF.MARK.HYRUM.1514447892
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,
ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892
Date: 2016.12.12 09:01:44 -05'00' Date: _____

From: Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>
Sent: Tuesday, December 13, 2016 10:28 AM
To: Mark Graff - NOAA Federal
Subject: Draft Spinrad Declaration - Judicial Watch
Attachments: Judicial Watch DRAFT Declaration Spinrad 12.13.16.docx

Hi, Mark,

As we discussed.

Ruth Ann

Ruth Ann Lowery, Attorney-Advisor
NOAA Office of General Counsel
Fisheries & Protected Resources Section
1315 East-West Highway, SSMC III, Room 15114
Silver Spring, MD 20910
(301)713-9671
Fax: (301) 713-0658

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Image not available for this document, ID: 0.7.3707.13483 000001

From: Ruth Ann Lowery - NOAA... (via Google Docs) <drive-shares-noreply@google.com>
Sent: Thursday, December 15, 2016 1:08 PM
To: Mark.Graff@noaa.gov
Cc: kevin.snell@usdoj.gov; rod.vieira@noaa.gov; h davidson@doc.gov;
rose.stanley@noaa.gov; jmyers@doc.gov; stacey.nathanson@noaa.gov;
lois.schiffer@noaa.gov
Subject: Judicial Watch: NOAA Cmts on Opening Motion
Attachments: Opening Motion 12 14 16.docx

[Ruth Ann Lowery - NOAA Federal](#) has attached the following document:



Opening Motion 12 14 16.docx



Kevin,

(b)(5)

?

Thanks,
Ruth Ann

Google Docs: Create and edit documents online.

Google Inc. 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA

You have received this email because someone shared a document with you from Google Docs.

Google™

Image not available for this document, ID: 0.7.3707.13492 000001

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, December 15, 2016 1:31 PM
To: Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: JW Motion for Summary Judgment
Attachments: OpeningMotion121416 final to DOJ.docx

Hey Guys,

(b)(5)
[Redacted text block]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

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Image not available for this document, ID: 0.7.3707.13493 000001

From: Snell, Kevin (CIV) <Kevin.Snell@usdoj.gov>
Sent: Thursday, December 15, 2016 7:54 PM
To: Lowery, Ruth Ann (Federal); Rose Stanley - NOAA Federal; Davidson, Hillary (Federal); Myers, Jordan (Federal); Vieira, Rodney (Federal); Graff, Mark (Federal)
Subject: Filed!
Attachments: Dkt. 16 - 2 Vaughn Index.pdf; Dkt. 16 - 3 May 27 Cover Letter.pdf; Dkt. 16 - 4 Spinrad Declaration.pdf; Dkt. 16 - 5 Proposed Order.pdf; Dkt. 16 - Motion for Summary Judgment.pdf; Dkt. 16 - 1 Graff Declaration.pdf

Thanks everyone for your incredible efforts in this case. This was not an easy task and it truly took a team effort. I greatly appreciate everyone's help!

Hope everyone has great weekends!

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF MARK H. GRAFF

Pursuant to 28 U.S.C. § 1746, I, Mark H. Graff, declare and state as follows:

1. I am currently the Freedom of Information Act (FOIA) Officer for the National Oceanic and Atmospheric Administration (NOAA), which is a part of the United States Department of Commerce (DOC). I have occupied this position since September 6, 2015. My primary duties include management of requests submitted to NOAA for records made under both the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a (PA). In that capacity, I oversee NOAA's receipt and log-in of in-coming FOIA requests, the tasking and coordination of searches for responsive records, and review of out-going responses.

2. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, upon conclusions and determinations reached and made in accordance therewith, and upon my personal examination of

the withheld and redacted documents. Additionally, this declaration includes the search terms, locations and parameters agreed upon with the plaintiffs and utilized by those who conducted the search. I am personally familiar with Plaintiff Judicial Watch's FOIA request, which is at issue in this civil action. I submit this declaration in support of a motion for summary judgment filed by the Department of Commerce in the above-captioned lawsuit.

3. This declaration provides background information on the development of a paper entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* ("Hiatus Paper" or "the Paper"), which was published in June 2015 in the journal *Science* and is the focus of the FOIA request at issue in this case. It also explains NOAA's search for records responsive to Plaintiff's FOIA request and the FOIA exemptions applied in processing the responsive records. A *Vaughn* index (Exhibit 1) provides a detailed description of information withheld by NOAA and challenged by Plaintiff, as well as NOAA's basis for those withholdings.

I. BACKGROUND

4. The National Centers for Environmental Information (NCEI), located within the NOAA's National Environmental Satellite, Data, and Information Service (NESDIS), develops use-inspired datasets, products and reports that describe average weather conditions (and changes therein) over the United States and the globe. NCEI acts as the "Nation's Scorekeeper" regarding the trends and anomalies of weather and climate, focusing on essential climatic elements such as temperature and rainfall, as well as extreme events such as hurricanes and droughts.

5. NCEI produces and maintains datasets for global ocean areas and global land areas. Changes in surface temperature over long periods are studied using several datasets that are continuously maintained and updated. There are separate datasets for the ocean and the land, which are then merged to create a global dataset.

6. Scientists throughout the government, including at agencies other than NOAA and researchers outside of the government, use NOAA's temperature datasets for a variety of purposes, including for climatic research and climate assessments. NCEI scientists are continually working on improving these datasets to provide scientists and the public with the most up-to-date and accurate information.

7. NCEI scientists periodically interpret and analyze global datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. NCEI scientists use the most recent information from these datasets to propose new scientific theories and also re-evaluate earlier conclusions reached within the scientific community in light of new or updated data.

8. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data, work which is consistent with the mission of NOAA. Nine NOAA scientists contributed to this paper: Thomas Karl (the lead author), Dr. Anthony Arguez, Dr. Boyin Huang, Mr. Jay Lawrimore, Mr. James McMahon, Dr. Matthew Menne, Dr. Thomas Peterson, Dr. Russell Vose, and Dr. Huai-min Zhang. Thomas Karl is the former Director of NCEI. Jay Lawrimore, Dr. Russell Vose, and Dr. Huai-min Zhang are supervisory scientists at NCEI. Dr. Anthony Arguez and Dr. Matthew Menne are climate scientists at NCEI. Since the publication

of the paper, Dr. Thomas Karl and Dr. Thomas Peterson have retired, and Mr. James McMahon no longer works at NCEI.

9. The Intergovernmental Panel on Climate Change (IPCC) released a report in stages between September 2013 and November 2014 that concluded that the upward global surface temperature trend from 1998-2012 was lower than the upward global surface temperature trend from 1951-2012. This apparent observed slowing was dubbed the “hiatus.”

10. There were significant developments related to the alleged “hiatus” in the two years immediately following the release of the IPCC report. In particular, both 2013 and 2014 were among the top-five warmest years on record for the globe. In addition, NOAA scientists made significant improvements to its sea surface temperature dataset, one of the largest being a correction that accounted for the difference in data collected from buoys and ships. (Until the mid-1970s, ships were used to measure sea surface temperatures; since then, buoys have increasingly been used.) Scientists developed a method to correct for the difference between these two observing systems, and incorporated those corrections into its dataset and subsequently the paper that is the subject of this request.

11. On or about October 31, 2014, Director Karl shared with a group of NOAA scientists a draft of a paper that he had worked on himself, inspired by some of the papers exchanged previously by the NCEI scientists. The draft developed an idea for properly accounting for the “hiatus,” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Director Karl asked the scientists to provide feedback to his draft.

12. The scientists who received the draft responded with feedback in various forms, including exchanging drafts of the paper with edits done via track changes and sending emails providing feedback.

13. Until the paper was submitted to *Science*, many drafts and revisions were exchanged along with emails and one-on-one discussions about various aspects of the paper, including: suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers' work, and so on. Such collaboration via drafts and discussions in emails and orally is standard practice at NCEI.

14. On or about December 23, 2014, a NOAA author submitted the draft paper to *Science* via an online portal.

15. *Science* follows a formal peer review process that is described on their public website. See <http://www.sciencemag.org/authors/peer-review-science-publications>. Peer reviewers are subject matter experts in the topic of the submitted paper who are able to use their expertise to evaluate the scientific rigor and merit of the paper.

16. Peer reviewers provide feedback on an array of issues, including making an overall recommendation as to whether the paper should be published, in view of *Science's* mission and also providing more detailed critique on a range of issues. These issues include the technical rigor of the data and methods used and whether the conclusions of the report are novel or similar to work already published. See <http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

17. According to *Science*, their peer review process is anonymous. The identities of reviewers are never revealed to authors, and reviewers are instructed not to identify themselves to any entity, including the press. Reviews are shared only with the author, potentially other reviewers (for cross-comment), and the Board of the journal. See <http://www.sciencemag.org/authors/peer-review-science-publications>.

18. Reviewers are expressly instructed to treat the submitted manuscript as privileged and confidential:

The submitted manuscript is a privileged communication and must be treated as a confidential document. Please destroy all copies of the manuscript after review. Please do not share the manuscript with any colleagues without the explicit permission of the editor. Reviewers should not make personal or professional use of the data or interpretations before publication without the authors' specific permission (unless you are writing an editorial or commentary to accompany the article).

<http://www.sciencemag.org/authors/peer-review-science-publications>.

19. This is reinforced in the journal's Instructions to Peer Reviewers of reports, which states:

Confidentiality: We expect reviewers to protect the confidentiality of the manuscript and ensure that it is not disseminated or exploited. Please destroy your copy of the manuscript when you are done. Only discuss the paper with a colleague with permission from the editor. We do not disclose the identity of our reviewers.

<http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

20. The authors received via email the first round of reviews from *Science* on or about February 26, 2015. In this case, *Science* sent the manuscript to five peer reviewers. These reviewers provided their comments anonymously to NOAA through *Science*, as is standard in the peer review process for *Science*.

21. After determining the best response to all of the peer reviewer comments, the authors submitted the revised manuscript and a response to reviewer comments to *Science* via the online submission portal on or about March 27, 2015. See Categories C and D of part 2 of the *Vaughn* Index.

22. On or about April 22, 2015, the authors received the second round of reviews from *Science* via email. The authors developed responses to this second round of comments, made revisions accordingly, and submitted the revised manuscript and response to reviewer comments to *Science* via the online portal on or about May 5, 2015. *See id.*

23. After submitting the revised manuscript, the authors received notice that it would be published, received galley proofs, and approved them. On June 4, 2015, the paper was published online on the *Science* website. This was followed up by publication in the printed volume of *Science* on June 26, 2015 (Volume 348, Issue 6242, at 1469).

II. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S REQUEST

24. Plaintiff's FOIA request was addressed to NOAA, which is located within the Department of Commerce ("the Department"). The request sought, in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.

3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

25. When NOAA officials first reviewed the request, they determined that it did not reasonably describe the records sought. NOAA and the Department, through counsel, conferred with Plaintiff's counsel to negotiate a clear description of the materials sought.

26. During the course of those discussions, NOAA indicated to Plaintiff that it understood Plaintiff's request to reflect an interest in the Hiatus Paper. Defendant suggested Plaintiff modify the FOIA request to call for a search for all documents and communications referring to the Hiatus Paper from October 1, 2014 through June 4, 2015. Defendant offered to search the files of the nine authors of the Study. Plaintiff confirmed its interest in the Hiatus Paper, but indicated that it sought only records referring to the topics listed in its initial FOIA request.

27. The parties ultimately "reached an agreement regarding the scope of the request and the relevant search parameters," which was memorialized in the Second Joint Status Report, submitted to this Court on March 1, 2016. Regarding the documents at issue in this litigation, the parties agreed that:

"Defendant will search the records of the nine authors of the June 4, 2015 study entitled Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus published in Science ("Karl Study") for records referring to the Karl Study and that contain the following search terms:

(1) "NMAT" and "Night Marine Air Temperatures";

(2) "ISTU", "ICOADS", and "sea ice";

(3) "satellite", "Advanced Very High Resolution Radiometer", "AVHRR", "Advanced Microwave Scanning Radiometer", and "AMSR".

For items 1, 2, and 3 of Plaintiff's FOIA request, the timeframe for the searches will be October 1, 2014 to June 4, 2015."

See Second Joint Status Report, ECF No. 10.

28. In the Third Joint Status Report, submitted to this Court on March 22, 2016, the parties agreed that NOAA, through the Department, would produce responsive, non-exempt records, as described above, to Plaintiff by May 27, 2016. *See* ECF No. 11.

29. On May 27, 2016, the Department released 102 pages of material in its entirety and 90 partially redacted pages. Defendant withheld in their entirety 8,013 pages of records. *See* May 27 Cover Letter (Exhibit 2); *see also* Fourth Joint Status Report, ECF No. 12. In that letter, NOAA informed Plaintiff that "[b]ecause the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records." Exhibit 2.

30. NOAA made a supplemental release of records on September 16, 2016, providing Plaintiff with an additional 44 pages of released material after further review the records identified and described in the letter accompanying the May 27, 2016, production, 7 of which were partially redacted because they included Tom Karl's personal telephone number.

31. After the September release, NOAA continued to evaluate the responsiveness and exemption status of the records that had been identified. Contemporaneously with this filing (on December 15), NOAA is releasing another 62 records providing Plaintiff with additional records that were previously withheld.

32. Because of the further segregation and responsiveness review NOAA conducted that led to the release of additional material to the Plaintiff, the page counts in the May 27 cover letter (and also the Fourth Joint Status Report) originally provided to Plaintiff are no longer accurate. A complete listing of all records withheld in full or in part pursuant to an exemption is reflected in the attached *Vaughn* Index.

II. THE SEARCH PROCESS

33. After NOAA and Plaintiffs, through counsel, reached an agreement as to the terms of the search for this FOIA request, it was determined that the records requested resided within one office: NCEI. NCEI's headquarters is located in Asheville, North Carolina. This determination was based on the fact that all of the agreed-upon custodians work or had worked within NCEI during the time in which responsive records were created.

34. The nine authors of the Hiatus Paper were Thomas R. Karl, Anthony Arguez, Boyin Huang, Jay H. Lawrimore, James R. McMahon, Matthew J. Menne, Thomas C. Peterson, Russell S. Vose, and Huai-Min Zhang.

35. NOAA instructed eight of the nine authors (record custodians) that were still within NCEI to conduct a search in accordance with the parameters agreed to by the parties and memorialized in the Second Joint Status Report. NOAA specified that custodians must search their email, electronic, and paper records.

36. Each records custodian still at NCEI¹ searched his own records in accordance with these instructions. As such, all search terms and parameters of the search as agreed upon by the Plaintiff were utilized by NOAA in the search of the files where responsive records were likely to be filed.

37. There were no common areas to be searched at NCEI because the authors all kept their own files separate.

38. After the custodians collected their records, they were forwarded for responsiveness and exemption review.

39. The search conducted was reasonably calculated to uncover all relevant, non-duplicative documents.

40. The Department compiled two sets of bates-numbered files, which included, in addition to the partially redacted and fully withheld email records, placeholder pages, which are discussed further in Paragraph 49. One bates-numbered file reflects the email records, and the other bates-numbered file reflects documents, as contained on parts 1 and 2 of the *Vaughn*.

41. Each record was evaluated separately for responsiveness, and each email was deemed to be one record.

42. In the case of an email with attachment(s), responsiveness determinations were made independently for that email and any attachment(s) to that email.

43. For email records that were joined with other emails in a chain, NOAA deemed responsive any email that related to the Paper and contained an agreed-upon search term as well

¹ One custodian (Thomas Peterson) had retired by the time of the search. His archived email inbox and outbox were searched by another author who was still with NOAA at the time. No additional, non-duplicative records created by Mr. Peterson that are responsive to this request are known to have existed following the retirement of Mr. Peterson.

as other, surrounding emails that were related to or provided important context for the email that contained the search term. If an email appeared to directly relate to the subject matter of the request in an email containing the search term, a case-by-case determination was made in good faith and in the effort to maximize transparency as to whether that record was responsive even though not technically within the search terms outlined in the Second Joint Status Report.

44. The search was reasonably calculated to uncover all relevant documents and there are no known locations where additional, non-duplicative, responsive material is likely to be found. Accordingly, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched.

III. The Vaughn Index

45. I have read the *Vaughn* index attached as Exhibit 1 and reviewed the documents referenced in that index. Based on my review of the documents and on information provided me in the course of my official duties, I have determined that the material redacted from the referenced documents falls within the enumerated FOIA exemptions identified in the index.

46. The *Vaughn* index is divided into two parts. The first part covers responsive emails that were withheld or redacted. It identifies each record by Bates stamp numbers (which correspond to the numbering on records provided to Plaintiff), the originator, the recipient(s), the date of the record, the title of the email, the exemption invoked, and the basis for withholding.

47. Due to how the email records are stored in and were printed from the user's email accounts, some email records are duplicative but certain copies truncate the metadata for that record email (e.g., the sender, recipient, subject line, who was cc'd on the records). Sometimes

NOAA was able to reconstruct the information by looking to duplicate instances that were printed differently, or by going to the original files. We have generally inferred that the subject line that prints at the top of the printed email chain carried through for individual email records connected to that string of emails.

48. The second part of the *Vaughn* index covers non-email documents that were withheld in their entirety, except for a relatively small number of documents that were released to Plaintiffs upon further review. These documents consist almost exclusively of five categories of records. Records that fell into one of the five categories are labeled in the *Vaughn* index by a letter that corresponds to a category. The few exceptions that do not fall into one of the five categories have a more detailed description.

49. The *Vaughn* index reflects occasional “gaps” in the Bates stamp numbering. For example, *Vaughn* part one reflects an entry for bates page 1, and the next entry is for bates page 4. Such “gaps” exist for three reasons. First, not all pages had redacted information. Only pages with redacted information are accounted for on the *Vaughn*. Second, NOAA, in an effort to be transparent during production, included pages that served as “placeholders” for records in email chains that were removed because those records were either non-responsive or were fully withheld under Exemption 5. For example, if one page with responsive records was produced with redactions, followed by four fully withheld pages of records, the four fully withheld pages were represented in the production by a placeholder page that indicated four pages of material had been withheld as either not responsive or as exempt under Exemption 5. That placeholder page was bates stamped during the initial production, but NOAA has not listed it in the *Vaughn*

index. And third, NOAA removed bates-marked documents that were non-responsive that had been inadvertently bates stamped during the initial production. The withheld records, if responsive, are represented elsewhere in the *Vaughn* index.

50. As reflected in the first part of the *Vaughn* index, NOAA withheld or redacted emails under Exemption 5 because they are protected by the deliberative process privilege. *See, generally, Vaughn* part 1. These records are inter-agency or intra-agency communications. The bulk of this information reflects the predecisional and deliberative exchange of ideas and recommendations among scientists within and outside NOAA as NOAA scientists developed and edited the Hiatus Paper or discussed the underlying analysis of the datasets for purposes of developing the paper. The information also includes communications among NOAA personnel carrying out related agency deliberations such as development of public communications and presentations to Congress. The communications are, unless otherwise indicated, among NOAA personnel and reflect agency deliberations or input to agency determinations. These deliberations were in preparation for agency decisions, including how to analyze and present the data and interpretation. A relatively small number of the deliberative communications reflect input from non-federal scientists who were contacted either by one of the authors or by the journal *Science* to provide feedback and input on the Paper. These non-federal scientists provided NOAA's scientists input for the agency's ongoing processes of developing the Hiatus Paper, as well as providing input for the agency's potential updating of underlying datasets and analysis based on those datasets. Additionally, one scientist provided input to inform the agency's development of a communications plan for the paper.

51. In addition to the emails redacted or withheld, NOAA withheld drafts of the Hiatus Paper. *See Vaughn* part two Category A. These documents are inter-agency or intra-agency drafts. This category includes the drafts of the “supplementary materials” that accompanied the Hiatus Paper and were made available for download by *Science* upon publication of the Paper. Category A in the *Vaughn* Index sometimes lists the draft paper text, figures and supplementary materials as one entry and sometimes separately. These were pre-decisional drafts that contained the opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or expert reviewers’ comments on earlier drafts of the paper. Disclosure of deliberative draft documents that were not ultimately finalized or adopted by NOAA risks confusing the public concerning NOAA’s position and also risks data or statements being taken out of context. Disclosure of these deliberative draft materials would also seriously undermine the quality and integrity of NOAA’s decisionmaking process, by deterring NOAA staff or experts outside the agency who are collaborating in development of the agency’s work from expressing their candid views on the development of data analysis and presentation.

52. NOAA also withheld documents that contain questions for discussion and draft graphs that were circulated by an author and created for author discussions during the development of the Hiatus Paper. *See Vaughn* part two Category E. These records are inter-agency or intra-agency documents. These documents are deliberative and pre-decisional, as they

reflect NOAA scientists' deliberations as to what constitutes the best data analysis and presentation for the Hiatus Paper.

53. NOAA also withheld drafts of a cover letter from Tom Karl to *Science* magazine in response to peer review comments. *See Vaughn* part two Category B. These records are inter-agency or intra-agency drafts. These drafts are predecisional and deliberative in that they include discussions and exchanges among authors in determining what to include, and how to present, their formal letter to accompany their peer review responses. The draft cover letters to *Science* contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' approach had not been finalized at that point.

54. NOAA also withheld draft responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. *See Vaughn* Index part two Category C. These records are inter-agency or intra-agency drafts. These drafts reflect pre-decisional discussions and proposed responses to peer review comments. The drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers. These drafts helped the NOAA authors determine how best to respond to comments provided during the peer review process initiated by the submission of the Hiatus Paper to *Science* for potential publication. These documents are internal, pre-decisional drafts that reflect the view of NOAA authors as to how to present their response to peer review feedback.

55. NOAA also withheld the final responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. See *Vaughn* Index Part 2 Category D. These records are inter-agency or intra-agency documents. These documents are predecisional and deliberative because they are responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. The responses were submitted as part of a process to assist in the authors' deliberations regarding whether and in what form to publish the paper. Confidentiality is important to the peer review process, and disclosure of the responses to peer reviews would discourage the sharing of candid thoughts of both the reviewers and of the scientists.

56. In addition to this formal peer review, NOAA's authors also welcomed the assistance of informal peer review from a limited group of scientific experts in evaluating the underlying datasets and developing the Hiatus Paper. It is common for NOAA scientists to seek input from other qualified experts to get a second opinion on a working hypothesis or to provide expertise that an author's affiliated organization may lack. Sometimes those scientists are employed outside the federal government, but they share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science.

57. This collegial relationship and shared goals lays the groundwork for an author to reach out for the kind of honest, confidential feedback necessary to formulate a sustainable, justified scientific conclusion.

58. Each of these scientists who offered their assistance is highly regarded in their specialized fields. Their prior work represents a portion of the prior published literature on the

alleged hiatus. Some of those works were consulted by the team in developing the “hiatus” paper and were cited as references in it.

59. One of the outside scientists who contributed (and is listed in the “Acknowledgements” section of the Hiatus Paper) is Dr. Gerald (Jerry) A. Meehl, an affiliate with the National Center for Atmospheric Research (NCAR), which is a National Science Foundation Federally Funded Research and Development Center. *See* <https://www2.ucar.edu/about-us/quick-facts>. In November 2014, Director Karl emailed Dr. Meehl and invited him to comment on drafts of the paper, and he provided insights and feedback in response. *See* Bates 66 (11/27/14) (released).

60. If a paper is expected to get an unusual amount of attention, a journal may seek pre-publication reactions from experts in the field outside of that journal’s formal peer review process. On occasion, those experts who are contacted by the journal will then directly communicate with the author(s) of the article and share their thoughts on the article.

61. These communications provide important feedback to the authors on the Hiatus Paper and often provide information, relied upon by NOAA, about the external expert’s own related recent or ongoing work. These communications provide input to the continuous, ongoing work to update and improve datasets and trend analyses, as described in Paragraphs 5 through 7.

62. One outside scientist who provided input (and is cited in the references for the Hiatus Paper) is Dr. Kevin E. Trenberth, who (like Dr. Meehl) is also affiliated with the NCAR. Dr. Trenberth was contacted for his expertise by a journalist prior to publication of the Hiatus Paper and asked to provide comment on the paper. Dr. Trenberth then contacted Director Karl

by email to provide feedback and discuss implications of the conclusion in light of other literature. *See* Bates 379 (6/1/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve datasets and trend analyses. In part, this information was also provided to inform NOAA in its deliberations as it formulated its public communications messaging for the Hiatus Paper. *See* Bates 381-382 (6/1/15).

63. Last, Dr. Kevin Cowtan, who is affiliated with the University of York in the United Kingdom, is an outside scientist who contacted Dr. Boyin and Director Karl, after being contacted by a writer at *Science* who was seeking comment on the paper before publication, during the embargo period. *See* Bates 292-293 (6/2/15). Those emails indicate that all participants understood and respected that there was an embargo on publicly disseminating or discussing the work until it was officially released on June 4. *See, e.g.*, Bates 295 (6/2/15). Director Karl indicated in an email that he would like to continue to review and incorporate Dr. Cowtan's work in NOAA's ongoing work. *See* Bates 295-296 (6/2/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve our datasets and trend analyses.

64. Disclosure of any of this information that is pre-decisional and deliberative would inhibit candid internal discussions and expressions of ideas, recommendations, criticism, and judgments regarding the development of scientific theories and presentations of information to the public and to Congress. Disclosure of the details of these confidential discussions, drafts, and responses, could reasonably be expected to chill the open and frank exchange of comments

and opinions that occurs between NOAA scientists and a limited group of qualified outside experts at such times. It would also inhibit candid internal discussions and the expression of recommendations and judgments regarding preferred courses of action for agency personnel.

65. To the extent the redacted or withheld information contains some factual material, the authors' selection and presentation of that factual material reflects the agency's deliberative process and is therefore protected from disclosure. Singling out a particular data point in the course of a deliberative discussion reflects a preliminary judgment or argument rather than an assertion of scientific fact. There is a risk of misconstruing or taking out of context an instance where one piece of information has been singled out for purposes of an informal discussion.

66. With regard to information withheld pursuant to exemption (b)(6), NOAA has determined that the individual privacy interests outweighed the public interest in disclosure.

67. I am further satisfied that NOAA has reasonably concluded that there was no additional non-exempt, responsive information that could be reasonably segregated and released to the plaintiff.

IV. CONCLUSION

In summary, the Department conducted thorough searches of all components that were reasonably likely to maintain responsive records and withheld only reasonably segregable information under exemption (b)(5) and (b)(6). Additionally, the search was reasonably calculated to uncover all relevant documents, and there are no known locations where additional, non-duplicative, responsive material is likely to be found.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 14th day of December, 2016, Silver Spring, Maryland.

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a large, looped 'G' and 'A'.

Mark H. Graff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 1 to Declaration of Mark Graff

Vaughn Index Part 1: Emails

Bates Page	Originator	Addressee	Date	Time	Title	Exemption	Released Status	Basis
1	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	NOAA affiliate asking NOAA scientist for clarification on data results from the paper prior to publication for development of communications materials related to the paper.
4	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
6	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	NOAA scientist sharing draft data analysis, based on scientist discussions, for development of the paper with other scientists.
14	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made to the paper. Email is duplicate of email found on page 102.
14	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of supplemental materials for the paper and discussing edits made to the paper.
14-15	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made for the development the paper.

15	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-hiatus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
15	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
17	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist discussing edits to be made for development of the paper. Asking another NOAA scientist about work to be done for the paper.
19	Peterson, Thomas C.	McMahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
22	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
22-23	McMahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist asking another scientist for clarification on data analysis conducted for the development of the paper.
23	Zhang, Huai-min	McMahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Personal cell phone number of scientist.
25-26	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.

26	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
27	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
27-28	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
28	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
28-29	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
33	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
37	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.

37-38	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.
38-40	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper (the scientist's responses are inserted into text of earlier email).
41	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
41	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
42	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis and graphics for the paper.
42	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis and graphics for development of the paper with other scientists.
45	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and asking about edits to be made to the paper.

48	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is cut off but text is duplicate of full text on page 42.
48	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48-49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49-50	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
50	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.

50-51	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
51	Menne, Matthew	Lawrimore, Jay; Karl, Thomas R.; Huang, Boyin; Zhang, Hai-min; McMahon, James; Vose, Russell	11/06/2014	10:55 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing proposed language for the paper as well as draft data analysis and graphics for development of the paper. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
53	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
53	Karl, Thomas R.	Huang, Boyin; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
53	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
66-67	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Outside scientist is providing feedback and review of data analysis for the paper in response to request for feedback from Tom Karl (via email that was Released). The outside scientist is providing observations regarding the climatic data used in the paper and raising issues for further discussion and clarification.

67-68	Karl, Thomas R.	Meehl, Gerald	11/29/2014	9:41 AM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Fully Withheld	NOAA scientist is responding to feedback on the hiatus paper provided by outside scientist and discussing data analysis conducted for the development of the paper. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
69	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.
70	Kossin, James P.	Karl, Thomas R.	5/21/2015	11:44 AM	Science paper	(b)(5)	Partially Redacted	NOAA scientist asking paper author offering personal opinion and inquiring about potential data analysis for the paper.
70	Karl, Thomas R.	Kossin, James P.	5/21/2015	11:55 AM	Science paper	(b)(5)	Partially Redacted	Paper author responding to personal opinion of NOAA scientist and sharing his personal opinion on draft data analysis for the paper. Asking if NOAA scientist about involvement future research and data analysis.
75	Karl, Thomas R.	Holdren, John P.	3/26/2015	4:35 PM	Acceptance of your Science Manuscript aaa5632	(b)(5)	Partially Redacted	NOAA scientist sharing release date for paper. NOAA scientist is also discussing future climate research for the agency and asking for opinion of John Holdren on this research and on the possible role of NOAA scientists in this research.
88	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and sharing results of data analysis he conducted for the paper and personal opinion on future research.
88	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	16:20	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist asking other scientists about data to potentially be used in further research study.

88-89	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis for the paper and personal opinion on future research.
100	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
100-101	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
101	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
101-102	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
102	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
104	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is partially cut off. Duplicate of full email found on page 41.

104	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
104	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 48-49.
104-105	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 49.
105-106	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
106	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
106	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.

108-109	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Email addresses are cut off. Duplicate of full email found on pages 66-67.
112	Zhang, Huai-min	Mcmahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Duplicate of page 23.
112	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
112	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
112-113	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 25-26.
113	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
113	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 27.
113-114	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 27-28.
114	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28.
114	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28-29.
116	Karl, Thomas R.	Sessing, Janice; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Partially Redacted	NOAA scientist sharing with other NOAA affiliates his thoughts on presenting the agency's climate change research to Congress.

128	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
128	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
128	Zhang, Huai-min	Mcmahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Duplicate of 23.
128-129	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
129	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
129	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 27.
130	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 27-28.
130	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28.
130	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 28-29.
131	Huang, Boyin	Lawrimore, Jay; Peterson, Thomas C.; Zhang, Huai-min; Mcmahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew	03/06/2015	8:33 AM	SST trend experiment	(b)(5)	Partially Redacted	NOAA scientist is sharing data analysis he conducted for the paper offering his opinion of the best approach to take in the paper.
133	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.

137-138	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 4.
139-140	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis to be used in the paper and asking for clarification on data analysis conducted for development of the paper.
140	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 17.
143	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Kris	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17 th warmest April on record for contiguous U.S.	(b)(5)	Partially Redacted	NOAA scientist discussing agency's climate change research and developing the agency's presentation for Congress.
156	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
156	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
156-157	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 38-40.

157	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
157	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
158	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Duplicate of page 42. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
158	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Duplicate of page 42. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
160	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	Duplicate of page 45.
162-163	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Duplicate of pages 66-67.
164	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
164	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 25-26.

164	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
164	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
166	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.
167	Maycock, Tom	Zhang, Huai-min	05/06/2015	12:58 PM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
234	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
234	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	4:20 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
234-235	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of pages 88-89.
240-241	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
242	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	4:20 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
242	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of pages 88-89.
243	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Mcmahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist sharing opinion on results of data analysis for development of the paper.

243	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	10:03 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of 15.
245	McMahon, James	Arguez, Anthony; Zhang, Huai-min; Karl, Thomas R.	03/25/2015	10:30 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper.
245	Zhang, Huai-min	McMahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper.
245-246	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of the best approach to take in the paper.
246	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of future revisions.
246	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of the best approach to take in the paper.

247-248	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the development of the paper. Scientist is also asking for opinion of another scientist.
249	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	03/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist discussing how to interpret and apply data trends in the paper as well as plans for discussing a related issue at an upcoming call.
249	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
251	Zhang, Huai-min	Peterson, Thomas C.; Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin	03/19/2015	1:34 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Text of email is partially cut off but full text of email is on page 300.
251-252	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
254	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 243.
257-259	Zhang, Huai-min	Menne, Matthew; McMahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/03/2014	10:50 AM	Trend plots	(b)(5)	Fully Withheld	NOAA scientist sharing updated and revised data analysis for the paper with another scientist and indicating what his next step will be.
262	Huang, Boyin	McMahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	03/19/2015	4:02 PM	Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Fully Withheld	Duplicate of page 6.

263	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	NOAA scientist explaining how he will analyze data for development of the paper and explaining next steps by another scientist for the same.
265	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data for the paper.
265-266	McMahon, James	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist asking another scientist to write up a description of the draft analysis to include in the paper and sharing update on draft data analysis and draft figure for development of the paper.
266	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and explaining data analysis for the development of the paper.
266-267	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and draft figures for development of the paper. Scientist is also discussing his next steps for working on the draft paper.
270	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Text of email is partially cut off. Email is duplicate of full email found on page 42.
271	Zhang, Huai-min	Lawrimore, Jay; Karl, Thomas R.; Huang, Boyin; McMahon, James; Menne, Matthew; Vose, Russell	11/13/2014	10:42 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	NOAA scientist sharing edits he made to the paper the in preparation of meeting to discuss the paper.
272	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 265.

272	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
272	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
272-273	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
273	Karl, Thomas	Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist discussing writing of methods section for data analysis methods to use in the paper.
273	Lawrimore, Jay	Karl, Thomas R.; Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/20/2014	10:39 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist is offering his opinion of the best approach to take in the paper and sharing proposed references to use in the paper. Text of email here is partially cut off but full text can be found on page 350.
275-276	Zhang, Huai-min	Menne, Matthew; Mcmahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/03/2014	10:50 AM	Trend plots	(b)(5)	Fully Withheld	Duplicate of pages 257-259.
280	Zhang, Huai-min	Mcmahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 245.
280	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 245-246.
281	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
281	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
281	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	12:05 PM	Fwd: new comparisons	(b)(5)	Fully Withheld	NOAA scientist asking another scientist about potential references to use in developing methods for data analysis for the paper.

281-282	Zhang, Huai-min	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:19 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist sharing sharing potential references to use in developing methods for data analysis for the paper.
282	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	12:56 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist inquiring about status of data analysis to be used in development of the paper.
282	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:58 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist inquiring about status of data analysis to be used in development of the paper.
282	Zhang, Huai-min	Karl, Thomas R.	03/25/2015	12:59 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist discussing sharing of draft data analysis for the development of the paper. Scientist discusses next steps he will take regarding the paper.
282	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin	03/25/2015	12:59 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist discussing sharing of draft data analysis for the development of the paper.
282	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	1:03 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist asking another scientist about data analysis methods used in the development of the paper.
283	Zhang, Huai-min	Karl, Thomas R.	03/25/2015	1:15 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist responding to question about data analysis methods used in development of the paper and awaiting information on another method from another scientist.
283	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.	03/26/2015	8:56 AM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist responding to question about data analysis methods used in draft of the paper.
285	Huang, Boyin	Karl, Thomas R.; Vose, Russell	05/05/2015	8:22 AM	Reference	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and potential references on methods for data analysis to be conducted for the paper.
287	Tepel, Mackenzie	Karl, Thomas R.	5/21/2015	3:45 PM	Re: FYI . . . Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.

287	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
287	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.
287	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
287	Sessing, Janice	Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Karl, Thomas R.; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:28 PM	Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.
289	Vincent, Katy	Karl, Thomas R.	06/03/2015	1:26 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.
289-290	Karl, Thomas R.	Vincent, Katy	06/03/2015	1:34 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA scientist discussing plan for communications with NOAA affiliate and press release in preparation for publication of the paper. Scientist is explaining data and methods in order to create public communications materials.
290	Vincent, Katy	Karl, Thomas R.	06/03/2015	2:21 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.

290	Karl, Thomas R.	Vincent, Katy	06/03/2015	3:29 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA scientist discussing plan for communications and press release in preparation for publication of the paper.
290	Vincent, Katy	Karl, Thomas R.	06/03/2015	3:31 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.
291	Karl, Thomas R.	Holdren, John P.	06/04/2015	10:16 AM	Acceptance of your Science Manuscript aaa5632	(b)(5)	Partially Redacted	NOAA scientist offering opinion on temperature trends assessment and potential future research needs and inquiring about the same.
292	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist responding to data analysis shared by outside scientist as relevant to paper. NOAA scientist is sharing his interpretations and asking for clarification on data analysis and conclusions reached by outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
292-293	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing data analysis he conducted on datasets relevant to the analysis presented in the paper. Scientist is sharing his interpretations and discussing his conclusions. Scientist notes he was contacted by the Journal Science for comment on the NOAA paper. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.

294-295	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:37 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist responding to data analysis shared by outside scientist and explaining how data corrections in the paper were derived. NOAA scientist is sharing his interpretations with the outside scientist and other NOAA scientists and asking for clarification on data analysis and conclusions reached by outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
295	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist is discussing interpretations and conclusions as relevant to analysis in the paper. Scientist is sharing his interpretations and asking NOAA scientists for clarification on data analysis. Scientist references additional, relevant ongoing research. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
295-296	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	3:33 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist acknowledges further ongoing work of outside scientist, indicates that the work would be relevant to inform future NOAA processes to update dataset methodology, and seeks thoughts from outside scientist regarding implications of other scientists' work.
296	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:36 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist commits to continuing the conversation with NOAA scientists regarding ongoing work and noting the further analysis he plans to do relevant to the analysis in the paper in order to provide comment on the paper.

296	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing further analysis he conducted relevant to the analysis in the paper. Scientist is sharing his interpretations and discussing the conclusions he made. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
296	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist forwarding to other NOAA scientists the comments and explanation of further analysis from outside scientist relevant to the analysis in the paper. NOAA scientist provides translation of short-hand used by the outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
296-297	Cowtan, Kevin	Huang, Boyin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Ruedy, Reto	06/07/2015	3:08 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing further data analysis he conducted on specific data sets as relevant to the paper. Scientist is sharing his interpretations and discussing the conclusions he made for NOAA's consideration. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
298-299	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
299-300	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	03/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 249.
300	Zhang, Huai-min	Peterson, Thomas C.; Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin	03/19/2015	1:34 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 6. Here email addresses are partially cut off but full email is on page 6.

302	Zhang, Huai-min	Mcmahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 42.
302	Karl, Thomas R.	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 42.
302	Zhang, Huai-min	Karl, Thomas R.; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Email text is partially cut off. Duplicate of full text of email found on page 41.
303-304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
304	Mcmahon, James	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 265.
304	Karl, Thomas	Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
307	Zhang, Huai-min	Menne, Matthew; Mcmahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/3/2014	10:50 AM	Re: Trend plots	(b)(5)	Fully Withheld	Email text is partially cut off. Duplicate of full text of email found on pages 257-259.

309	Huang, Boyin	Lawrimore, Jay; Peterson, Thomas C.; Zhang, Huai-min; McMahan, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew	03/06/2015	8:33 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is offering his interpretation of experiments conducted in development of the paper.
309-310	Peterson, Thomas C.	Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahan, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	8:50 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist sharing references in developing the paper.
310	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahan, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:00 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is offering his opinion in developing the paper.
310-311	Peterson, Thomas C.	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahan, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:02 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another NOAA scientist and offering his interpretation of data analysis used in developing the paper.
311	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahan, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:21 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is asking other NOAA scientists for clarification regarding data analysis for development of the paper.
315	McMahon, James	Menne, Matthew	03/24/2015	12:32 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is asking other NOAA scientist for clarification regarding data analysis for development of the paper.
315	Menne, Matthew	McMahon, James	03/24/2015	12:35 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to inquiring and explaining his understanding on data analysis for development of the paper.
315	McMahon, James	Menne, Matthew	03/24/2015	12:36 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to a question from another NOAA scientists regarding data analysis for development of the paper.

317	Zhang, Huai-min	Mcmahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 245.
317	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 245-246.
318	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
318	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
318	Zhang, Huai-min	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:19 PM	Fwd: new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 281-282.
320	Huang, Boyin	Karl, Thomas R.; Vose, Russell	05/05/2015	8:22 AM	Reference	(b)(5)	Fully Withheld	Duplicate of page 285.
322	Sessing, Janice	Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Karl, Thomas R.; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:28 PM	Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
324	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
324	Sessing, Janice	Karl, Thomas R.; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:56 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing the agency's presentation for Congress.

324	Vose, Russell	Karl, Thomas R.; Sessing, Janice; Hammer, Gregory; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	7:47 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
324	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
325	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287. Here email is partially cut off, but full text can be found on page 287.
325	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
325	Sessing, Janice	Gregg, Margarita; Karl, Thomas R.	5/11/2015	6:28 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
330	Vincent, Katy	Karl, Thomas R.	06/03/2015	1:26 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 289.
330-331	Vincent, Katy	Karl, Thomas R.	6/3/2015	2:21 PM	Re: Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 290.

331	Karl, Thomas R.	Vincent, Katy	06/03/2015	1:34 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of pages 290-291.
331	Vincent, Katy	Karl, Thomas R.	6/3/2015	3:31 PM	Re: Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 291.
334-335	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Fully Withheld	Duplicate of pages 66-67.
335	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Menne, Matthew; Vose, Russell; McMahon, James; Lawrimore, Jay	12/1/2014	7:48 PM	Re: Our Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing how to respond to reviewer feedback and is offering his opinion of the best approach to take for development of the paper.
338	Matthews, Jessica	Peterson, Thomas	3/6/2015	8:32 AM	Fwd: new confidence intervals	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing data analysis methodology to be used in development of the paper.
339	Peterson, Thomas C.	Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	8:50 AM	SST trend experiment	(b)(5)	Fully Withheld	Email addresses are partially cut off. Duplicate of full email on pages 309-310.
339	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:00 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 310.
340	Peterson, Thomas C.	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:02 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 310.

340	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:21 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 311.
341	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 243.
342	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
342	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
342	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
342	Sessing, Janice	Gregg, Margarita; Karl, Thomas R.	5/11/2015	6:28 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Email is partially cut off. Duplicate of full email found on page 287.

343, 348	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343, 347	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
343-344	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
344, 347	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.
344	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
344-345	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.
348	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
350	Zhang, Huai-min	Lawrimore, Jay; Karl, Thomas, R.; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/21/2014	9:04 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing and discussing drafts for development of the paper, including status of the paper.

350	Lawrimore, Jay	Karl, Thomas R.; Zhang, Huai-min; McMahan, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/20/2014	10:39 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
350	Karl, Thomas R.	Zhang, Huai-min; McMahan, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
350	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 274.
350-351	McMahon, James	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
351	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
351	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
353-354	Zhang, Huai-min	Menne, Matthew; McMahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/3/2014	10:50 AM	Re: Trend plots	(b)(5)	Fully Withheld	Duplicate of pages 257-259.
362-363	Zhang, Huai-min	McMahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing how to respond to reviewer feedback and is offering his opinion of the best approach to take in the paper as well as providing information on data for purposes of discussion.
363-364	Huang, Boyin	McMahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	NOAA scientist explaining data that he is sharing for development of the paper.

365-366	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
368	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.
368-369	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:24 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
371	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.
371-374	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
377-378	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
378	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.

379	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	12:38 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist contacts NOAA scientist, noting that he was contacted for comment on the paper, referencing prior work bearing on the issues reviewed in the paper, and explaining the analysis used in the outside scientist's work. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
379-380	Karl, Thomas R.	Trenberth, Kevin; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Arguez, Anthony	6/1/2015	1:19 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist explains scope of hiatus paper to outside scientist and noting relationship to existing literature. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
380	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	1:40 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist provides comments in response to hiatus paper including evaluation of significance of the paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
380-381	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	2:26 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist responds to various points made in the outside scientist's comments, including pointing to figure in paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
381-382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	2:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist clarifies data underlying prior work, clarifies one of his comments on hiatus paper, and explains that reason for sharing the comments was to help inform agency process of developing public communications relating to paper.

382	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	3:14 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist compares conclusions in outside scientist's prior work with conclusions in hiatus paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	2:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Duplicate of pages 381-382.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:37 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist cites figure in prior work to support his position. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:40 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist cites additional figures from another prior work to support his position. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382-383	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	3:49 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist requests clarification of finding from outside scientist's prior work and suggests potential explanation. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
383	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:37 PM	Re: your new science paper	(b)(5)	Fully Withheld	Duplicate of email at page 382.
383-384	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist provides additional explanation and cites figures in prior work regarding Arctic temperatures. Outside scientist also opines on other scientists' work and notes possible interactions and questions for future research. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.

385-386	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	10:01 AM	Re: SST adjustment question	(b)(5)	Fully Withheld	NOAA scientist contacts outside scientist to request insight and clarification regarding the outside scientist's work on data corrections in sea surface temperature data set and how such corrections may relate to the alleged hiatus in order to better understand data analysis as related to the alleged hiatus for development of the paper.
389-390	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	3:41 PM	Re: SST adjustment question	(b)(5)	Partially Redacted	NOAA scientist responds to clarification and analysis from outside scientist by characterizing preliminary finding and discussing time scales.
396	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
396-397	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 292-293.
398-399	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
399	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294-295.
399	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:36 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
399-400	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
400	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.

400	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
400	Cowtan, Kevin	Huang, Boyin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Ruedy, Reto	06/07/2015	3:08 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 296-297.
402	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	10:01 AM	Re: SST adjustment question	(b)(5)	Partially Redacted	Duplicate of pages 385-386.
403-404	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	3:41 PM	Re: SST adjustment question	(b)(5)	Partially Redacted	Duplicate of pages 389-390.
407, 412	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407, 411	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
407-408	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
408, 411	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.

408	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
408-409	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.
413, 418	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413, 417	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
413-414	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
414, 417	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.
414	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
414-415	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.

422	Karl, Thomas R.	Tepel, Mackenzie; Sessing, Janice; Vose, Russell; Vincent, Katy; Leslie, John;	5/21/2015	4:08 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
422	Tepel, Mackenzie	Karl, Thomas R.	5/21/2015	3:45 PM	Re: FYI . . . Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of 287.
422	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
422	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
422	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.

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40-50	Category A	(b)(5)	
51-56	Category A	(b)(5)	
57	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
58-63	Category D	(b)(5)	
64	Category B	(b)(5)	
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111-116	Category A	(b)(5)	
117-127	Category A	(b)(5)	
128	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
129-134	Category D	(b)(5)	
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142 - 152	Category A	(b)(5)	
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662 - 663	Draft graphs of SST data created by NOAA scientists to be used in the paper.	(b)(5)	
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993 - 1059	Category A	(b)(5)	
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1096 - 1107	Author draft graphs and slides on SST data to be used in the paper.	(b)(5)	
1108	Author notes on draft graphs and slides on SST data to be used in the paper.	(b)(5)	
1109 - 1165	Category A	(b)(5)	
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1170 - 1173	Draft graphs of land and ocean temperature data created by NOAA scientists to be used in the paper.	(b)(5)	
1174 - 1223	Category A	(b)(5)	
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1308 - 1309	Draft graphs of SST data created by NOAA scientists to be used in the paper.	(b)(5)	
1310 - 1325	Category A	(b)(5)	
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1337 - 1338	Draft graphs of SST data created by NOAA scientists to be used in the paper.	(b)(5)	
1339 - 1355	Category A	(b)(5)	
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1439 - 1449	Category C	(b)(5)	
1450 - 1467	Category A	(b)(5)	
1468 - 1470	Author's interpretations on data analysis of ERSST for development of the paper.	(b)(5)	
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1503-1524	Category A	(b)(5)	
1525	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
1526 - 1531	Category D	(b)(5)	
1532 - 1548	Category A	(b)(5)	
1549	Category B	(b)(5)	
1550 - 1555	Category C	(b)(5)	
1556 - 1572	Category A	(b)(5)	
1573	Category B	(b)(5)	
1574 - 1579	Category C	(b)(5)	

1580-1607	Category A	(b)(5)	
1608-1618	Category A	(b)(5)	
1619-1624	Category A	(b)(5)	
1625-1630	Category A	(b)(5)	
1631-1641	Category A	(b)(5)	
1642	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
1643-1648	Category C	(b)(5)	
1649-1658	Category A	(b)(5)	
1659-1668	Category A	(b)(5)	
1669-1672	Category A	(b)(5)	
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1828-1837	Category A	(b)(5)	
1838-1846	Category A	(b)(5)	
1847-1855	Category A	(b)(5)	
1856-1865	Category A	(b)(5)	
1866-1875	Category A	(b)(5)	
1876-1886	Draft powerpoint by author presenting information on global temperature and presenting data analysis conducted by NOAA scientists for the paper.	(b)(5)	
1887-1897	Category A	(b)(5)	

1898-1908	Category A	(b)(5)	
1909-1919	Category A	(b)(5)	
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1930-1941	Category A	(b)(5)	
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1954-1966	Category A	(b)(5)	
1967-1979	Category A	(b)(5)	
1980-1991	Category A	(b)(5)	
1992-2003	Category A	(b)(5)	
2004-2016	Category A	(b)(5)	
2017-2029	Category A	(b)(5)	
2041-2057	Category A	(b)(5)	
2058-2070	Category A	(b)(5)	
2071 2076	Draft graphs and charts of SST data to be used in development of the paper.	(b)(5)	
2097-2099	Category A	(b)(5)	
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2111-2129	Category C	(b)(5)	
2130-2138	Category E	(b)(5)	
2139-2143	Category A	(b)(5)	
2144-2153	Category A	(b)(5)	
2154-2164	Category C	(b)(5)	
2165-2176	Category A	(b)(5)	
2177-2189	Category A	(b)(5)	
2190-2195	Category A	(b)(5)	
2197-2202	Category A	(b)(5)	
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2213-2223	Category C	(b)(5)	
2224-2235	Category A	(b)(5)	
2236-2252	Category A	(b)(5)	
2274-2284	Category C	(b)(5)	
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2291-2301	Category A	(b)(5)	
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2330-2340	Category C	(b)(5)	
2341- 2360	Category E	(b)(5)	
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2630-2646	Category A	(b)(5)	
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2692-2702	Category C	(b)(5)	
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2780-2786	Category C	(b)(5)	
2787-2793	Category C	(b)(5)	
2793-2809	Category A	(b)(5)	
2810-2815	Category C	(b)(5)	
2816	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
2817-2822	Category D	(b)(5)	
2823	Category B	(b)(5)	
2824-2829	Category C	(b)(5)	
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2881	Category B	(b)(5)	
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2905	Category B	(b)(5)	
2906-2911	Category D	(b)(5)	
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2967-2977	Category A	(b)(5)	
2978-2988	Category A	(b)(5)	
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3005-3011	Category C	(b)(5)	
3012-3027	Category A	(b)(5)	
3028-3044	Category A	(b)(5)	
3045	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
3046-3061	Category D	(b)(5)	
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3118-3128	Category C	(b)(5)	
3129-3135	Category D	(b)(5)	
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3169-3185	Category A	(b)(5)	
3186-3202	Category A	(b)(5)	
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3307-3312	Category A	(b)(5)	
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3323-3333	Category A	(b)(5)	
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3621-3633	Category A	(b)(5)	
3638-3643	Draft graphs and charts of SST data to be used in development of the paper.	(b)(5)	
3669-3672	Category A	(b)(5)	
3672-3688	Category A	(b)(5)	
3689-3692	Draft graphs of SST and land temperature data to be used in development of the paper.	(b)(5)	
3693-3694	Duplicates of emails processed elsewhere	(b)(5)	
3695-3703	Category E	(b)(5)	
3705-3719	Category A	(b)(5)	
3720-3730	Category C	(b)(5)	
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3735-3744	Category A	(b)(5)	
3745-3755	Category C	(b)(5)	
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4156-4165	Category C	(b)(5)	
4166-4175	Category C	(b)(5)	
4176-4186	Category C	(b)(5)	
4187-4196	Category C	(b)(5)	
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4219-4229	Category C	(b)(5)	

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4235-4245	Category A	(b)(5)	
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4257-4262	Category C	(b)(5)	
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4274-4279	Category A	(b)(5)	
4280-4285	Category C	(b)(5)	
4286-4296	Category A	(b)(5)	
4297-4301	Category A	(b)(5)	
4302-4307	Category C	(b)(5)	
4308	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4309-4314	Category D	(b)(5)	
4315-4321	Category C	(b)(5)	
4322-4332	Category A	(b)(5)	
4333-4343	Category A	(b)(5)	
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4366-4371	Category A	(b)(5)	
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4373-4409	Category C	(b)(5)	
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4437-4447	Category A	(b)(5)	
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4454-4464	Category C	(b)(5)	
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4476-4486	Category A	(b)(5)	
4487-4496	Category A	(b)(5)	
4497-4502	Category A	(b)(5)	
4503	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4504-4509	Category C	(b)(5)	
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4520-4525	Category A	(b)(5)	
4533-4543	Category A	(b)(5)	
4544-4549	Category A	(b)(5)	

4550	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4551-4556	Category D	(b)(5)	
4557-4567	Category A	(b)(5)	
4568-4573	Category A	(b)(5)	
4574-4578	NOAA draft communications plan regarding publication of the paper.	(b)(5)	
4579-4589	Category A	(b)(5)	
4591-4599	Draft FAQs for communications plan related to release of paper.	(b)(5)	
4600-4607	Category A	(b)(5)	
4614-4619	Category C	(b)(5)	
4620-4630	Category A	(b)(5)	
4631-4636	Category A	(b)(5)	
4637-4639	Category A	(b)(5)	
4640-4650	Category C	(b)(5)	
4651-4654	Draft chart of MLOST data created by NOAA scientists to be used in development of the paper.	(b)(5)	
4655-4665	Category A	(b)(5)	
4666-4675	Category A	(b)(5)	
4676-4688	Category A	(b)(5)	
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4733-4736	Category E	(b)(5)	
4737-4750	Category A	(b)(5)	
4751-4761	Category E	(b)(5)	
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5360-70	Category C	(b)(5)	
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5375-5385	Category C	(b)(5)	
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5461-71 PR	Category C	(b)(5)	
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5642-5647	Category C	(b)(5)	

5648-5658	Category A	(b)(5)	
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5666-71	Category C	(b)(5)	
5672-5682	Category A	(b)(5)	
5681-5688	Category A	(b)(5)	
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5707-5712	Category A	(b)(5)	
5713-5723	Category A	(b)(5)	
5724-5729	Category A	(b)(5)	
5730	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
5731-36	Category C	(b)(5)	
5738-41	Draft charts of annual global temperatures for use in development of the paper.	(b)(5)	
5742-5752	Category A	(b)(5)	
5753-5758	Category A	(b)(5)	
5781-5791	Category A	(b)(5)	
5792-5797	Category A	(b)(5)	
5798-5808	Draft powerpoint by author presenting information on global temperature and presenting data analysis conducted by NOAA scientists for the paper.	(b)(5)	
5809-11	Category C	(b)(5)	
5812-5822	Category A	(b)(5)	
5823-5828	Category A	(b)(5)	
5829-5837	Category A	(b)(5)	
5840-5849	Category C	(b)(5)	
5850-5858	Category C	(b)(5)	
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5869-5879	Category A	(b)(5)	
5880-5890	Category A	(b)(5)	
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5902-5912	Category A	(b)(5)	
5913-5918	Category A	(b)(5)	
5919-5924	Category A	(b)(5)	
5925-45	Category C	(b)(5)	
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5963-75	Category C	(b)(5)	

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6034-44	Category C	(b)(5)	
6045-6055	Category A	(b)(5)	
6056-6061	Category A	(b)(5)	
6062-67	Category D	(b)(5)	
6068-6071	Category C	(b)(5)	
6072-6074	Category C	(b)(5)	
6075-6077	Category C	(b)(5)	
6078-6088	Category A	(b)(5)	
6089-6099	Category A	(b)(5)	
6100-6110	Category A	(b)(5)	
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6134-45	Category C	(b)(5)	
6146-6151	Category D	(b)(5)	
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6187-96	Category C	(b)(5)	
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6203-6213	Category A	(b)(5)	
6214-15	Category C	(b)(5)	
6216-6226	Category C	(b)(5)	
6227-6228	Category C	(b)(5)	
6229-6239	Category A	(b)(5)	
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6250-52	Category C	(b)(5)	
6253-6258	Category A	(b)(5)	
6259-6272	Category A	(b)(5)	
6270-72	Category C	(b)(5)	
6273-6278	Category A	(b)(5)	
6279-6287	Category A	(b)(5)	
6288-6296	Category C	(b)(5)	
6299-6304	Category A	(b)(5)	
6305-6315	Category A	(b)(5)	
6316-29	Category C	(b)(5)	
6330-6338	Category A	(b)(5)	
6339-57	Category C	(b)(5)	

6358	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
6359-6364	Category C	(b)(5)	
6365-6370	Category C	(b)(5)	
6371-6472	Category C	(b)(5)	
6372-6378	Category D	(b)(5)	
6379-6384	Category C	(b)(5)	
6385-6390	Category A	(b)(5)	
6391-6401	Category A	(b)(5)	
6402-6407	Category A	(b)(5)	
6408-09	Category A	(b)(5)	
6410-6420	Category A	(b)(5)	
6421-23	Category C	(b)(5)	
6424-6434	Category A	(b)(5)	
6435-6440	Category A	(b)(5)	
6441-43	Category C	(b)(5)	
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6455-6460	Category A	(b)(5)	
6461-69	Category C	(b)(5)	
6470-6478	Category A	(b)(5)	
6479-6488	Category C	(b)(5)	
6489-6499	Draft graphs of SST data created by NOAA scientists to be used in development of the paper.	(b)(5)	
6500-6508	Category A	(b)(5)	
6509-6532	Category A	(b)(5)	
6533-6537	Category A	(b)(5)	
6538-6545	Category A	(b)(5)	
6546-6552	Category A	(b)(5)	
6553-6557	Category A	(b)(5)	
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6640-6649	Category A	(b)(5)	
6650-6671	Category A	(b)(5)	
6672-8882	Category E	(b)(5)	
6683-6699	Category A	(b)(5)	
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6711	Category B	(b)(5)	
6712-6720	Category C	(b)(5)	
6721-6731	Category A	(b)(5)	
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6760-6765	Category A	(b)(5)	
6766-6761	Category A	(b)(5)	

6772	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
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6863-6875	Category C	(b)(5)	
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6890-6896	Category C	(b)(5)	
6897-6912	Category C	(b)(5)	
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6929-6939	Category A	(b)(5)	
6940-6950	Category A	(b)(5)	
6951-6961	Category A	(b)(5)	
6962-6972	Category A	(b)(5)	
6973-6983	Category A	(b)(5)	
6984-6994	Category A	(b)(5)	
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7107-7112	Category A	(b)(5)	
7113-7118	Category A	(b)(5)	
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7413-7423	Category C	(b)(5)	
7424-7434	Category C	(b)(5)	
7435-7445	Category C	(b)(5)	
7446-7450	Draft FAQs for communications plan related to publication of paper.	(b)(5)	
7451-7454	Category A	(b)(5)	
7455-7497	Category A	(b)(5)	
7498-7506	Category A	(b)(5)	
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7514-7521	Category A	(b)(5)	
7522-7535	Category A	(b)(5)	
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7861-7866	Category A	(b)(5)	
7867-7873	Category A	(b)(5)	
7874-7877	Category A	(b)(5)	

Categories	Descriptions
A	Draft of paper "Possible artifacts of data biases in the recent global surface warming hiatus" by Thomas Karl, et al. as well as the drafts of the "supplementary materials" that accompanied the paper and were made available for download by Science upon publication of the paper. Non-final, pre-decisional draft contains opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper, and/or responses to other NOAA authors' or
B	Drafts of cover letter exchanged between authors, from Tom Karl to Science magazine, in response to peer review comments.

C	<p>Draft responses to external peer review. Draft responses exchanged among NOAA authors to determine how best to respond to comments provided by external peer reviewers. Pre-decisional discussions that reflect proposed responses to peer review comments. Drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers.</p>
D	<p>Responses to external peer reviews. NOAA's Responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. Responses were submitted as part of process to assist in authors' deliberations whether and in what form to publish the paper.</p>
E	<p>Questions for discussion and draft graphs circulated by one author and created for author discussions during development of the paper.</p>

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 2 to Declaration of Mark Graff



May 27, 2016

Mr. Bill Marshall
425 Third St., SW
Suite 800
Washington, DC 20024

Re: FOIA Request No. DOC-NOAA-2016-000351

Dear Mr. Marshall:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAOnline on December 15, 2015, for certain records of the National Oceanic and Atmospheric Administration (NOAA). Pursuant to the Joint Status Report filed on March 22, 2016 in *Judicial Watch v. U.S. Department of Commerce*, 1:15-cv-2088-CRC (D.D.C.), and the Court's March 24, 2016 Minute Order in that action, on April 15, 2016, we released in their entirety 122 pages of records that are responsive to item 4 of your FOIA request, as modified by the March 1, 2016 Joint Status Report.

Pursuant to the March 22, 2016 Status Report and the Court's March 24, 2016 Minute Order, this letter responds to items 1-3 of your request, as modified by the March 1, 2016 Joint Status Report. We are providing 242 pages, including:

- 102 pages of records that we are releasing in their entirety.
- 57 pages of records that have been partially redacted under FOIA Exemption (b)(5), 5 U.S.C. 552(b)(5), which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The redacted material is protected by the deliberative process privilege.
- 13 pages of records that contain redactions of non-responsive material.
- 17 pages of records that have been partially redacted under FOIA Exemption (b)(5) (deliberative process) and also contain redactions of non-responsive material.
- 3 pages of records that are partially redacted under FOIA Exemption (b)(5) and FOIA Exemption (b)(6), 5 U.S.C. 552(b)(6), which protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

In this release, we have also noted, on 50 separate pages, where pages of email chains have been withheld in their entirety as non-responsive or under a FOIA exemption. We are withholding in their entirety 8,013 pages of records under FOIA Exemption (b)(5) that are pre-decisional and deliberative, and protected under the deliberative process privilege. 7,877 of these pages are drafts and other documents. 136 of these pages are deliberative email communications. Because the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records.

If you have any questions, your attorney may contact Kevin Snell, Trial Attorney, at 202-305-0924. Please be sure to refer to the civil action number, 1:15-cv-2088-CRC, and the FOIA Request Number, DOC-NOAA-2016-00351, in all correspondence regarding this case.

Sincerely,

A handwritten signature in blue ink that reads "Mark S. Paese". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Mark S. Paese
Deputy Assistant Administrator
NOAA Satellite and Information Service

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF DR. RICHARD W. SPINRAD

1. I am Dr. Richard W. Spinrad, and I have been the Chief Scientist of the National Oceanic and Atmospheric Administration (NOAA) since May 9, 2014. As Chief Scientist, I provide policy and program direction for the agency’s science and technology priorities. I have 30 years of scientific and executive experience. At different points in my career, I have worked as a research scientist, including for the Navy; held faculty appointments at three universities; directed a national non-profit organization; and presided over a private company.

2. I am aware that the pending litigation regards NOAA’s decision to withhold certain substantive communications among scientists from its response to a request under the Freedom of Information Act (FOIA), in light of the exception from disclosure under FOIA that applies to material generated in connection with a “deliberative process.” At issue are email

discussions among NOAA scientists at the National Centers for Environmental Information (NCEI) who authored a report published in June 2015 addressing climate trends, as well as communications between those NOAA scientists and scientists located outside the federal government. I am, further, aware that a separate declaration from the NOAA FOIA Officer (Mark H. Graff) will address the particular facts of the specific report and specific communications at issue in this litigation.

3. I submit this declaration to describe more generally the harm that would result to our agency and to federal scientists if the deliberative communications among NOAA's scientists, or between NOAA's scientists and outside experts providing input to the agency's processes, were to be released. Such harm would result from release of either deliberative communications among federal scientists, or of deliberative communications between federal scientists and scientists outside the federal government (whom I refer to as "outside scientists"). Such outside scientists may work, for example, in academia, international data-collecting organizations, non-governmental research organizations, state agencies, or private industry.

4. My education includes a Bachelor of Arts degree (1975) in Earth and Planetary Sciences from The Johns Hopkins University in Baltimore, Maryland, and Master of Science (1978) and Doctoral degrees (1982) in oceanography from Oregon State University.

5. Prior to joining NOAA, I served as a Program Manager and Division Director with the United States Navy Office of Naval Research (1987 - 1994); the Executive Director for the Consortium for Oceanographic Research and Education, a non-profit research advocacy organization (1994 - 1999); and Technical Director (senior civilian) at the United States Navy Office of the Oceanographer of the Navy (1999 - 2003). In connection with my service, I was

awarded the U.S. Navy Distinguished Civilian Service Award, which is the highest civilian award given by the Navy.

6. From 2003 to 2010, I served as Assistant Administrator at NOAA in two sequential capacities, as head of the National Ocean Service and as head of NOAA's Office of Oceanic and Atmospheric Research.

7. I then served as Vice President for Research at Oregon State University in Corvallis, Oregon (2010 - 2014) before being appointed as NOAA's Chief Scientist.

8. Among my other duties during my career at NOAA, I have served as co-lead of the White House committee that developed the first national set of ocean research priorities and as the representative from the Department of Commerce to the White House Office of Science and Technology Policy (OSTP) committee addressing scientific integrity, culminating in guidance from OSTP in December 2010.

9. As NOAA's Assistant Administrator for Oceanic and Atmospheric Research (2005 - 2010), I directed the agency's programs in oceanography, atmospheric science, and climate science. I directly supervised significant research efforts including those relating to ocean exploration, the National Sea Grant College Program, and the Climate Program Office. I also supervised seven NOAA laboratories around the United States.

10. As NOAA's Assistant Administrator for Ocean Services and Coastal Zone Management (2003 - 2005), I directed the agency's navigation and coastal services, including the National Geodetic Survey, the Office of National Marine Sanctuaries, and the Office of Coastal Resource Management. As part of my duties, I represented the interests of the United States in

the establishment of a global tsunami warning system. I also served as the United States permanent representative to the United Nations' Intergovernmental Oceanographic Commission.

11. I have received several high honors during my tenure at NOAA, including Presidential Rank Awards from Presidents George W. Bush and Barack H. Obama.

12. During my career, I have belonged to several professional societies designed to advance research and education and to promote communication among the scientific community. Such organizations bring together scientists from different settings, including government, academia, and industry, recognizing their shared goals. I am a fellow of the American Meteorological Society, the Marine Technology Society, and the Institute of Marine Engineering, Science and Technology. I am the past president of the Oceanography Society and president-elect of the Marine Technology Society.

13. Because I have worked as a scientist in multiple settings, including NOAA, the Navy and in academia, I have a broad perspective on the key importance of collaboration to the scientific community. My experiences have included a broad array of types and intensities of collaboration. I have worked alongside researchers in the field and at sea, and have co-authored dozens of peer-reviewed publications with collaborators from all of the sectors identified above.

14. The heart of the scientific method is the formulation, refining, and testing of hypotheses using available facts, which must be gathered through research and then analyzed. Scientists pursuing a research objective may begin with only rough ideas or ideas that are not yet fully formed. Those ideas are then developed, tested, and revised as data are collected and interpreted. The possible interpretations are generated and tested in part through exchanges and

candid debates with peers inside and outside the federal government. The set of available information, and our understanding of it, evolves through this process.

15. Focusing on the work we do at NOAA, I would point to the exchange and debate among peers as the mechanism that allows us to ensure that the scientific products we develop and release to the public are robustly developed and accurately tested. Such rigorous vetting is critical to developing and releasing scientific information of the highest possible quality to inform the public and decision-makers.

16. When we are developing and refining hypotheses, then, we value input and feedback from the community of scientists who have expertise in the field relating to a particular project. The relevant expertise will likely not be located in just one organization, but most often will be shared among several different scientists, each of whom may have a specialized focus.

17. In seeking out expert feedback and input, scientists generally do not distinguish between colleagues who work within federal agencies and scientists who work in other settings. Rather, our scientific peers who have expertise to offer are generally considered as belonging to one scientific community that shares the overall goal of advancing scientific understanding in their fields. Sometimes experts located outside the federal government have a specialized area of expertise that the agency lacks, or they may be respected peers who can offer a second opinion.

18. Indeed, in some scientific fields (including climate science) there are only a limited number of scientists with the relevant, specialized expertise. Many of them are federal employees, and having a strong scientific team in-house enables our agencies to produce very high quality scientific products. Integrating the perspectives and information from outside scientists allows us to produce even more robust scientific products.

19. It is therefore commonplace, as a research project proceeds, for federal scientists to reach out to request feedback and input from colleagues both inside and outside the federal government who have relevant knowledge and expertise. As I noted above (§ 3), these colleagues may be located in such settings as academia, international data-collecting organizations, non-governmental organizations, or private industry, and may have a common history of collaborating with federal scientists on working groups and panels. These requests for input often lead to candid discussions and debates that can be thought of as a type of informal peer review that fulfills a valuable role in developing scientific thought and promoting scientific understanding. In an earlier era, such discussions were limited to conversations among scientists at irregular intervals, such as at professional society gatherings. The advent of electronic communications has facilitated more frequent and regular discussions, to the great advancement of science.

20. There is a general and well-established presumption, often implied rather than explicit, that such discussions are not intended to be, and will not be, shared with a wider audience. Confidentiality is essential to ensuring the participants are free to propose new ideas or explanations without fear of misinterpretation or being taken out of context, and without slowing down the exchange of ideas. Sometimes the communications are very informal and are developed quickly, which is helpful particularly at the initial stages of project development when it is important to generate new ideas.

21. By allowing for the testing and refinement of ideas, such confidential discussions help ensure that scientific products are more well-developed and robust. If such discussions

could not take place, the exchange of scientific understanding would be hampered and the pace of scientific progress would slow.

22. I believe several types of harm would likely result to the agency, to federal scientists, and ultimately to the public if federal scientists could not engage in the type of confidential, candid discussions with each other or with outside experts that I have described. Federal scientists should be permitted the same opportunities for collegial collaboration that is the standard for scientists in other settings. This collaboration is particularly productive as new facts become available and we seek consensus in the scientific community on the appropriate interpretation and understanding of these facts.

23. First, there is the risk of chilling candid, informal exchanges and debates among scientists in the community of experts, leading to a less robust scientific process overall. This would adversely affect the agency's ability to produce high quality scientific products. Federal scientists obviously must communicate with one another in developing their agencies' products, and should have confidence that their preliminary views and suggestions will be treated as confidential. They should also feel free to reach out and express their ideas to qualified outside scientists for their feedback. If there is uncertainty as to whether their communications will be kept from public view, federal scientists would likely be less candid about expressing their views and seeking important feedback. They may be concerned, for example, about potential damage to their reputation from a statement being misconstrued or taken out of context or about the risk of harassment. In certain contexts, such as climate research and analysis, the potential for a chilling effect is particularly high because developments in this area typically generate a high

level of interest or controversy. The quality of our scientific products would greatly suffer if our scientists were unable to freely suggest, explore and test their ideas due to such considerations.

24. Similarly, outside scientists should have confidence that input they provide to their peers at federal agencies will be treated as confidential. If an outside scientist believed that their communications with federal scientists may become public, he or she may change the way they engage with federal colleagues in a way that slows the exchange of ideas, or they may choose not to engage in this type of valuable, informal peer review at all. This would narrow the range of perspectives taken into account in generating our scientific products and therefore reduce the overall robustness of the scientific process.

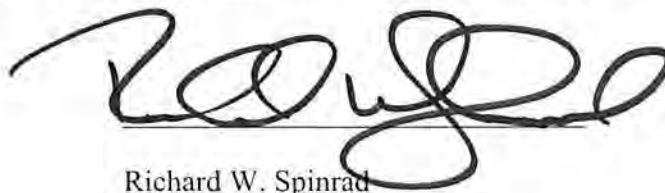
25. Second, there is a risk that the public may become confused by preliminary or incomplete information contained in the communications among scientists, or by information that is misinterpreted or taken out of context. Here also, the climate science context is one in which the risks of misinterpretation or confusion are somewhat elevated, in light of the degree of interest by various groups and the complex nature of the interpretations at issue. For example, because the community of experts is already familiar with the context of their communications and the current state of the science, they tend to use shorthand and informal language in sharing ideas that are actually highly technical and complex. I note, for example, that the use of the term "theory" has a very specific definition in scientific circles, but is interpreted in a vastly different manner by the lay public. While use of informal or short-hand language is useful and appropriate to expedite discussions among peers, more formal explanations and, in many cases, caveats, would be necessary for products that are intended to be shared with a public audience.

26. Third, there is the risk that federal agencies would be unable to attract and retain the best scientists if these scientists were unable to communicate in confidence with peers inside their agencies or with experts in the community outside the federal government. This was demonstrated dramatically as we improved the OSTP guidance on scientific integrity over the last several years; I have had many discussions with academic scientists who indicated that the scientific freedom reflected in the government's policies on scientific integrity have encouraged them to consider applying for and accepting positions in government laboratories. If instead federal scientists believed they must wall themselves off from confidential discussions with each other or with outside scientists, depriving their projects of valuable, informal input and expertise, they may conclude they can perform their work better in another setting.

27. In conclusion, upholding the expectations of confidentiality of scientists – whether employed in the federal government or outside of it – who have participated in candid exchanges and debates in the development of the agency's scientific products is critical to fostering a vigorous scientific process. This, in turn, is critical to ensuring the public receives the highest quality information from federal agencies.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 15 day of December, 2016, Washington, D.C.

A handwritten signature in black ink, appearing to read "R. Spinrad", written over a horizontal line.

Richard W. Spinrad

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

[PROPOSED] ORDER

Upon consideration of the U.S. Department of Commerce’s (“the Department’s”) motion for summary judgment, and any response and reply thereto, and the entire record here, and for good cause shown, it is hereby

ORDERED that, for the reasons set forth in the Department’s motion:

- 1. The Department’s motion is hereby **GRANTED**; and
- 2. Summary judgment is hereby **ENTERED** for the Department.

Dated: _____

CHRISTOPHER R. COOPER
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendant U.S. Department of Commerce hereby moves for summary judgment on all of Plaintiff's claims. This motion is supported by a statement of material facts as to which there is no genuine issue, a memorandum of points and authorities, the Declarations of Mark Graff and Dr. Richard Spinrad, and a *Vaughn* index. A proposed order is attached.

Dated: December 15, 2016

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

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v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

In this Freedom of Information Act (“FOIA”), Plaintiff Judicial Watch requested from the National Oceanographic and Atmospheric Administration (“NOAA”), a component of the Department of Commerce, records relating to different temperature metrics and datasets.¹ The parties conferred and reached an agreement regarding the scope of the request and relevant search parameters. Using those agreed-upon parameters, NOAA conducted a search and ultimately produced responsive, non-exempt material.

Plaintiff now challenges the adequacy of NOAA’s search and all of its redactions and withholdings. But as discussed more fully herein, NOAA conducted a search that was reasonably calculated to locate all non-duplicative records in its possession responsive to Plaintiff’s request. Moreover, all of the challenged information and records that NOAA withheld were properly exempt from production. The Court should therefore grant summary judgment in favor of the Department of Commerce.

FACTUAL BACKGROUND

I. The Hiatus Paper

The FOIA request at issue centers around a June 4, 2015 study authored by NOAA scientists and published in the journal *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change (“IPCC”) released a report in stages that concluded that the upward global surface temperature trend from 1998-2012

¹ The FOIA request also sought communications between NOAA and the House of Representatives Committee on Science, Space, and Technology. The agency made a separate production of these records, which Plaintiff’s counsel indicated in writing that Plaintiff did not intend to challenge. Therefore, this motion for summary judgment and accompanying documents do not address the agency’s response to that aspect of the request.

was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) Decl. ¶ 9 (attached herein as Exhibit A). The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” *Id.* The Hiatus Paper, drafted after that report by a team of NOAA scientists, sought to properly account for the alleged “hiatus.”

NOAA’s National Centers for Environmental Information (“NCEI”) produces and maintains datasets for global ocean areas and global land areas. *Id.* ¶ 6. Scientists throughout the government, including scientists at agencies other than NOAA, and outside of the government, use the sea surface temperature and land surface temperature datasets for a variety of purposes, including for climatic research and climate assessments. *Id.* NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. *Id.* There were two significant developments related to the “hiatus” after the IPCC’s report. In particular, 2013 and 2014 were two of the five warmest years on record for the globe. *Id.* ¶ 10. Also, NOAA scientists made significant improvements to its sea surface temperature dataset, one of largest being a correction that accounted for the difference in data collected from ships and buoys. *Id.* Buoys have been increasingly used since the 1970s to measure sea surface temperatures, and scientists developed a method to correct for the difference between these two observing systems and incorporated those corrections into the dataset. *Id.*

NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. *Id.* ¶ 7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. *Id.* ¶ 8.

Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to

NOAA's sea surface temperature dataset. *Id.* ¶ 11. Karl sought feedback on the draft paper, and a team of scientists at NOAA worked to develop a manuscript. *See id.* ¶¶ 11-13. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on the implications of other researchers' work, and so on. *Id.* ¶ 13. Such collaboration via discussions and drafts is standard practice at NCEI. *Id.* ¶ 13.

In December 2014, the authors submitted the draft paper to the journal *Science*. *Id.* ¶ 14. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. *Id.* ¶ 20. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See id.* ¶ 21. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. *Id.* ¶ 23.

II. The FOIA Request and NOAA's Response

Plaintiff's FOIA request, dated October 30, 2015, sought in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the

utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

Graff Decl. ¶ 24; *see also* Answer, ECF No. 8-1.

Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. *Id.* During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. *Id.* ¶ 26. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. *Id.*

The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” *Id.*; Graff Decl. ¶ 27.

After NOAA directed those custodians to run the agreed-upon searches, it made a production on May 27, 2016 of 102 pages of material in its entirety and 90 partially redacted pages. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records, and informed Plaintiff that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12. The parties then

discussed the details of potential challenges to NOAA's production, and NOAA agreed to provide Plaintiff a draft *Vaughn* index in an attempt to narrow the issues in dispute. *See* Fifth & Sixth Joint Status Report, ECF Nos. 13 & 14. Upon further review of the withheld information, on September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's cell phone number), Graff Decl. ¶ 30, and contemporaneous with this filing on December 15, 2016, NOAA released an additional 62 records, Graff Decl. ¶ 31.

STANDARD OF REVIEW

A court reviews an agency's response to a FOIA request *de novo*. 5 U.S.C. § 552(a)(4)(B). "FOIA cases are typically and appropriately decided on motions for summary judgment." *Moore v. Bush*, 601 F. Supp. 2d 6, 12 (D.D.C. 2009). In deciding at the summary judgment stage whether an agency has fully discharged its obligations under FOIA, "the agency must show, viewing the facts in the light most favorable to the requester, that there is no genuine issue of material fact." *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994).

ARGUMENT

I. NOAA's Search Was Reasonable, Adequate, and Satisfies Its Obligation Under the FOIA

A. The Standard for an Adequate Search

The touchstone for determining whether an agency should prevail on a motion for summary judgment in FOIA litigation is whether the agency demonstrates that its "search for documents was adequate." *Larson v. Dep't of State*, 565 F.3d 857, 869 (D.C. Cir. 2009). An agency's search is adequate if "it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The adequacy of a FOIA

search is thus gauged “not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (quoting *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)). In short, “[t]he adequacy of the search . . . is judged by a standard of reasonableness.” *Steinberg*, 23 F.3d at 551; *see also DiBacco v. U.S. Army*, 795 F.3d 178, 194 95 (D.C. Cir. 2015) (“A search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.” (quoting *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986))).

“In demonstrating the adequacy of the search, the agency may rely upon reasonably detailed, nonconclusory affidavits submitted in good faith.” *Id.* (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). Such affidavits are sufficient if they “set[] forth the search terms and the type of search performed, and aver[] that all files likely to contain responsive materials (if such records exist) were searched.” *Chambers v. U.S. Dep’t of Interior*, 568 F.3d 998, 1003 (D.C. Cir. 2009) (quoting *McCready v. Nicholson*, 465 F.3d 1, 7 (D.C. Cir. 2006)). This standard does not require that “the affidavits of the responding agency set forth with meticulous documentation the details of an epic search for the requested records.” *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982). “Rather, in the absence of countervailing evidence or apparent inconsistency of proof, affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice” *Id.* Moreover, “[s]uch agency affidavits attesting to a reasonable search ‘are afforded a presumption of good faith,’ and ‘can be rebutted only with evidence that the agency’s search was not made in good faith.’” *Riccardi v. US Dep’t of Justice*, 32 F. Supp. 3d 59, 63 (D.D.C. 2014) (quoting *Def. of Wildlife v. U.S. Dep’t of Interior*, 314 F. Supp.2d 1, 8 (D.D.C. 2004)).

Finally, courts in this circuit recognize the “well-worn rule . . . that the adequacy of a FOIA search is not to be judged by its results.” *Rosenberg v. United States Dep’t of Immigration & Customs Enf’t*, 13 F. Supp. 3d 92, 104 (D.D.C. 2014). “The question is not ‘whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was *adequate*.’” *Steinberg*, 23 F.3d at 551 (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)) (emphases in original). Thus, courts have rejected challenges to the adequacy of a search, even when a “slim yield may be intuitively unlikely” and a “reasonable observer would find th[e] result[s] unexpected.” *Ancient Coin Collectors Guild*, 641 F.3d at 514. Moreover, “mere speculation that as yet uncovered documents might exist[] does not undermine the determination that the agency conducted an adequate search for the requested records.” *Wilbur v. CIA*, 355 F.3d 675, 678 (D.C. Cir. 2004); *see also Sheffield v. Holder*, 951 F. Supp. 2d 98, 101 (D.D.C. 2013) (noting that a requester “cannot rest . . . on mere conjecture or ‘purely speculative claims about the existence and discoverability of other documents’” (quoting *Elec. Privacy Info. Ctr. v. Dep’t of Homeland Sec.*, 384 F. Supp. 2d 100, 107 (D.D.C. 2005))).

B. NOAA Conducted an Adequate Search

As set forth in Mark Graff’s Declaration, NOAA’s search for records responsive to Plaintiff’s FOIA request was more than adequate. *See Perry*, 684 F.2d at 127. Judicial Watch and NOAA reached an agreement as to how the search would be carried out. The agency would search the records of the nine Hiatus Paper authors for any record referring to that study and containing the term “NMAT,” “night marine air temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “advanced very high resolution radiometer,” “AVHRR,” “advanced microwave scanning radiometer,” and “AMSR.” Graff Decl. ¶ 27; Second Joint Status Report at 2, ECF No.

10. The timeframe for the search would be October 1, 2014 to June 4, 2015. *Id.* NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. *Id.* ¶ 33. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. *Id.* ¶ 35. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. *Id.* ¶¶ 36-38.² There were no common areas at NCEI for NOAA to search. *Id.* ¶ 37. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. *Id.* ¶ 44.

On this record, NOAA's search should be upheld under FOIA. NOAA has provided "a reasonably detailed [declaration], setting forth the search terms and the type of search performed," and averred that all files likely to contain responsive, non-duplicative materials were searched. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (quoting *Oglesby*, 920 F.2d at 68). NOAA has "made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby*, 920 F.2d at 68.

II. NOAA Properly Withheld Information Under Exemption 5

FOIA does not require disclosure of "matters that are . . . inter-agency or intra-agency memorandums or letters [which] would not be available by law to a party other than an agency in

² One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. *See* Graff Decl. ¶ 36 n.1. No additional records responsive to this request from that author are known to have existed following his retirement. *See id.*

litigation with the agency.” 5 U.S.C. § 552(b)(5). “Exemption 5 . . . exempt[s] those documents, and only those documents, normally privileged in the civil discovery context.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 thus protects the attorney-client privilege, the attorney work product privilege, and the deliberative process privilege. *Id.*; see also *Rockwell Int’l Corp. v. Dep’t of Justice*, 235 F.3d 598, 601 (D.C. Cir. 2001).

The deliberative process privilege “allows the government to withhold documents and other materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). According to the D.C. Circuit,

There are essentially three policy bases for this privilege. First, it protects creative debate and candid consideration of alternatives within an agency, and, thereby, improves the quality of agency policy decisions. Second, it protects the public from the confusion that would result from premature exposure to discussions occurring before the policies affecting it had actually been settled upon. And third, it protects the integrity of the decision-making process itself by confirming that officials should be judged by what they decided, not for matters they considered before making up their minds.

Russell v. Dep’t of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982) (quoting *Jordan v. Dep’t of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978)).

The privilege is necessary because “those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the detriment of the decisionmaking process.” *Sears*, 421 U.S. at 150-51. “[E]fficiency of Government would be greatly hampered if, with respect to legal and policy matters, all Government agencies were prematurely forced to ‘operate in a fishbowl.’” *EPA v. Mink*, 410 U.S. 73, 87 (1973), *abrogated on other grounds*, Pub. L. No. 93-502, 88 Stat. 1561 (1974). There are “[t]wo requirements [that] are essential to the deliberative process privilege: the material must be predecisional and it must be deliberative.” *In re Sealed Case*, 121 F.3d at 737.

The agency is best situated “to know what confidentiality is needed ‘to prevent injury to the quality of agency decisions.’” *Chem. Mfrs. Ass’n v. Consumer Prod. Safety Comm’n*, 600 F. Supp. 114, 118 (D.D.C. 1984) (quoting *Sears*, 421 U.S. at 151). NOAA’s justification for asserting Exemption 5 is “sufficient if it appears ‘logical’ or ‘plausible.’” *Wolf v. CIA*, 473 F.3d 370, 374-75 (D.C. Cir. 2007).

Here, NOAA properly withheld information under Exemption 5 that is protected by the deliberative process privilege because the information withheld reflects deliberations in preparation for decisions of how to analyze and present data and theory, as well as decisions about how to respond to peer review comments and deliberations on developing public communications and congressional presentations. *See* Graff Decl. ¶¶ 50-63. Disclosure of such information, which is predecisional and deliberative, and contains selected factual material intertwined with opinion, would inhibit candid internal discussions and the expression of recommendations and judgments. *Id.* ¶ 64. Disclosure of the details of these confidential discussions and drafts could reasonably be expected to chill the open and frank exchange of comments and opinions that NOAA officials engage in, as well as inhibit candid internal discussions and recommendations regarding preferred courses of action for agency personnel. *Id.*

The documents withheld in full or in part under the deliberative process privilege fall generally into three categories: (1) drafts of the Hiatus Paper; (2) internal deliberations, including email exchanges; and (3) peer review materials, both formal and informal. As explained below and in the attached *Vaughn*, each redacted or withheld document contains both predecisional and deliberative information. Accordingly, NOAA properly asserted Exemption 5 based on the deliberative process privilege.

1. Drafts of the Hiatus Paper

NOAA withheld pursuant to Exemption 5 inter- or intra-agency, predecisional, and deliberative draft versions of the Hiatus Paper (including drafts of its accompanying figures and “supplementary materials”) that were produced while NOAA scientists were developing the Paper. Graff Decl. ¶ 51.³ “[D]raft documents by their very nature, are typically predecisional and deliberative, because they reflect only the tentative view of their authors; views that might be altered or rejected upon further deliberation either by their authors or by superiors.” *In re Apollo Grp., Inc. Sec. Litig.*, 251 F.R.D. 12, 31 (D.D.C. 2008) (non-FOIA case) (citation omitted). Accordingly, “drafts are commonly found exempt under the deliberative process exemption.” *People for the Am. Way Found. v. Nat’l Park Serv.*, 503 F. Supp. 2d 284, 303 (D.D.C. 2007). Among other reasons for this, disclosure of “decisions to insert or delete material or to change a draft’s focus or emphasis . . . would stifle the creative thinking and candid exchange of ideas necessary to produce good historical work.” *Dudman Commc’ns Corp. v. Dep’t of Air Force*, 815 F.2d 1565, 1569 (D.C. Cir. 1987). Indeed, drafts are ordinarily exempt regardless of whether or to what extent segments of the draft made their way into the final product: “If the segment appeared in the final version, it is already on the public record and need not be disclosed. If the segment did not appear in the final version, its omission reveals an agency deliberative process: for some reason, the agency decided not to rely on that fact or argument after having been invited to do so.” *Exxon Corp. v. Dep’t of Energy*, 585 F. Supp. 690, 698 (D.D.C. 1983) (quoting *Lead Industries Ass’n v. OSHA.*, 610 F.2d 70, 86 (2d Cir. 1979)); see *ViroPharma Inc. v. HHS*, 839 F. Supp. 2d 184, 193 (D.D.C. 2012) (“The choice of what factual

³ The fact that some draft versions were shared for peer review purposes outside of the federal government does not affect those drafts’ status as inter- or intra-agency. See *infra* at Section II.3.

material . . . to include or remove during the drafting process is itself often part of the deliberative process, and thus is properly exempt under Exemption 5.”); *cf. Marzen v. HHS*, 825 F.2d 1148, 1155 (7th Cir. 1987) (noting that privilege “protects not only the opinions, comments and recommendations in the draft, but also the process itself”).

These drafts are predecisional inasmuch as they were generated to assist the agency in preparing the final version of the Hiatus Paper. *See Quarles v. Dep’t of the Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990) (explaining that materials are predecisional when “prepared in order to assist an agency decisionmaker in arriving at . . . decisions”). And they are deliberative in that they reflect the development of the final paper; these non-final, predecisional drafts contain opinions and recommendations of the NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or peer reviewers’ comments on earlier drafts of the paper. *See* Graff Decl. ¶ 51; *Vaughn* part 2 Category A. Withholding this material under Exemption 5 was proper, and the release of such drafts would inhibit agency scientists from expressing their views and deter NOAA scientists from participating candidly in the development of scientific products in the future. *See* Graff Decl. ¶ 51.⁴

2. Communications Among NOAA Personnel

Also integral to the drafting of the Hiatus Paper, the authors frequently communicated and exchanged ideas with one another via email during the Paper’s development. Here, NOAA

⁴ Equally appropriate, NOAA’s *Vaughn* also shows that the agency withheld draft documents that aided in or related to the development of the Paper, such as “[d]raft graphs of land and ocean temperature data created by NOAA scientists to be used in the paper,” *Vaughn* part 2 at bates pages 1170-73, “[d]raft graphs and charts of SST data to be used in [the] development of the paper,” *Vaughn* part 2 at bates pages 2071-76, and a “[d]raft powerpoint by [an] author presenting information on global temperature and presenting data analysis done by NOAA scientists for the paper,” *Vaughn* part 2 at bates pages 1876-86.

withheld inter- or intra-agency, predecisional, and deliberative communications. *See* Graff Decl. ¶ 50. In pursuing a research objective, scientists may begin with only a rough idea, and then develop, test, and revise that idea as data is collected and interpreted. Declaration of Richard W. Spinrad (“Spinrad Decl.”) ¶ 14 (attached herein as Exhibit B). Possible interpretations are generated and tested in part through candid debates and exchanges among peers. *Id.* ¶ 15. Indeed, the exchange and debate among peers is the mechanism that allows NOAA to ensure its scientific products are robustly developed and accurately tested. *Id.* ¶ 16. And there is a general and well-established presumption that such discussions are not intended to be, and will not be, shared with a wider audience, as confidentiality is essential to ensuring participants feel free to propose new ideas or explanations without fear of misinterpretation or being taken out of context. *Id.* ¶ 20. It is critical that this type of information be protected so as not to chill candid exchanges and debates, as well as to avoid the risk of confusing the public with preliminary or incomplete information. *See id.* ¶¶ 23-25.

NOAA’s *Vaughn* index reinforces that these types of predecisional and deliberative communications occurred here, were integral to the development of the Hiatus Paper, and were appropriately withheld or redacted. *See Abteu v. U.S. Dep’t of Homeland Sec.*, 808 F.3d 895, 898 (D.C. Cir. 2015) (“[O]fficials should be judged by what they decided, not for matters they considered before making up their minds” (citation and internal quotation mark omitted)). For example, NOAA is redacting or withholding communications between scientists in which authors asked for clarification on data analysis conducted for developing the Paper, *Vaughn* part 1 at bates pages 22-23, shared opinions on the results of a draft data analysis for developing the Paper, *Vaughn* part 1 at bates page 15, offered opinions as to the best approach to take in the Paper, *Vaughn* part 1 at bates pages 300, 335, 362-63, and provided opinions on statistical error

uncertainty ranges for development of the Paper, *Vaughn* part 1 at bates page 245. Moreover, NOAA withheld a document that presented questions and draft graphs to spur discussion among the NOAA scientists. This document was created and circulated for the purpose of author discussions during the development of the Hiatus Paper, and shows NOAA scientists considering what constitutes the best data analysis and presentation for the Paper. *See Vaughn* part 2 Category E; Graff Decl. ¶ 52.⁵

In addition to withholding communications concerning the development of the Hiatus Paper, NOAA also withheld communications and information reflecting the development of a plan by its officials for communications and press release in preparation for publication of the paper, *e.g. Vaughn* part 1 at bates page 289-90, *Vaughn* part 2 at bates page 7446-50, as well as the agency's development of a presentation to Congress, *e.g., Vaughn* part 1 at bates pages 143, 324 (explaining that redacted email reflected "NOAA scientist discussing climate change research and developing the agency's presentation for Congress"). This withheld information, which reflects NOAA's development of how to brief Congress and the public, is predecisional and deliberative and falls squarely within Exemption 5. *E.g., Judicial Watch, Inc. v. U.S. Dep't of the Treasury*, 796 F. Supp. 2d 13, 31 (D.D.C. 2011) (noting email discussing response to press inquiry protected under deliberative process privilege).

All of this material is precisely the sort of information that the deliberative process privilege is designed to protect. *See Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854,

⁵ Similarly, NOAA withheld information reflecting discussions among scientists concerning potential scientific inquiries. *See, e.g., Vaughn* part 1 at bates page 75 (discussing future climate research and asking for opinion on this research and on possible role of NOAA scientists in this research). Again, such material is predecisional and deliberative, and therefore is exempt from disclosure. *E.g., Sears*, 421 U.S. at 151 n.18 (explaining that protection extends to records that are part of decisionmaking process even where process does not produce actual decision by agency).

866 (D.C. Cir. 1980) (document is “predecisional” if it is “generated before the adoption of an agency policy” and “deliberative” if it “reflects the give-and-take of the consultative process”); *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 9 (2001) (explaining that deliberative process privilege’s “object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government”) (citation omitted); *Russell*, 682 F.2d at 1048 (“[T]he exemption protects not only communications which are themselves deliberative in nature, but all communications which, if revealed, would expose to public view the deliberative process of an agency.”). Moreover, any factual material in the withheld documents reflect the authors’ selection and presentation of factual material, Graff Decl. ¶ 65, and as such it too is covered by the deliberative process privilege. *See, e.g., Ancient Coin Collectors Guild*, 641 F.3d at 513 (explaining that factual material can be withheld where it reflects “an exercise of discretion and judgment calls” and that the “legitimacy of [the] withholding” turns on “whether the selection or organization of facts is part of an agency’s deliberative process”).

Because all of the redacted and withheld information is inter- or intra-agency, predecisional, and deliberative in nature, NOAA properly applied Exemption 5.

3. Peer Review Material

NOAA also withheld inter- or intra-agency material reflecting the different peer review processes its analyses and drafts underwent prior to publication of the Hiatus Paper. *Science* follows a formal peer review process in which subject matter experts evaluate the rigor and merit of the paper, and provide feedback on an array of issues. Graff Decl. ¶ 15. Those anonymous, impartial reviewers share their reviews with the authors, *Science*’s board, and potentially other reviewers (for cross-comment). *Id.* ¶ 17.

Here, *Science* sent the manuscript to five anonymous peer reviewers, and the scientists received two rounds of comments. Upon receiving these reviewers' comments, the NOAA scientists deliberated internally as to how to respond in writing to every comment received. NOAA properly withheld peer reviewer comments, the agency's internal draft responses to these peer reviewer comments, draft cover letters NOAA's scientists wrote to accompany their response, as well as the agency's final responses to peer reviewer comments. See Graff Decl. ¶¶ 53-54; *Vaughn* part 2 Category B, C, D.

The D.C. Circuit has specifically held that comments provided by peer reviewers during the peer review process for publication of scientific articles in scientific journals are covered by Exemption 5 because they are both "pre-decisional because it preceded the agency's decision whether and in what form to publish" the paper and were part of the agency's deliberative process "because the agency secured review commentary in order to make that decision." See *Formaldehyde Inst. v. U.S. Dep't of Health and Human Servs.*, 889 F.2d 1118, 1123-25 (D.C. Cir. 1989). As that Court recognized, agency scientists "must regularly rely on the comments of expert scientists to help them evaluate the readiness of agency work for publication [and i]n that sense they must rely on the opinions and recommendations of temporary consultants." *Id.* at 1125.

The scientists' draft responses to the peer reviewer comments are also covered by Exemption 5 since these materials, including personal opinions and recommendations, draft language, data, and data interpretation for consideration, as well as comments on previous drafts of the responses, reflect predecisional and deliberative discussions. See *Vaughn* part 2 Category C; Graff Decl. ¶ 54. Similarly, the final responses to peer review comments that NOAA submitted to *Science* during the peer review process reflect the agency's response to constructive

criticism and advice, and were part of the process to assist in the authors' deliberation as to whether and in what form to publish the paper. *See Vaughn* part 2 Category D; Graff Decl. ¶ 55. These final responses, then, fit comfortably within Exemption 5. *See Petroleum Info. Corp.*, 976 F.2d at 1434 (agency documents that were "prepared in order to assist an agency decisionmaker in arriving at his decision" are "predecisional" (citation omitted)); *Coastal States Gas Corp.*, 617 F.2d at 866. Finally, the draft cover letters to *Science* accompanying the scientists' responses to the peer review comments contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' final approach had not been finalized at that point. *Vaughn* part 2 Category B; Graff Decl. ¶ 53. Withholding such draft material was appropriate.

The fact that the peer review comments were sent by *Science*, and the responses to those peer reviewer comments were sent back to *Science*, does not affect their status as "intra-agency" materials that may be protected by Exemption 5. "Recognizing that the purpose of the exemption was to promote the quality of agency policy decisions and that often these policy decisions were best made by incorporating the advice of outside experts, [the D.C. Circuit] developed a 'consultant corollary' whereby communications with temporary consultants would be considered 'intra-agency' for the purposes of Exemption 5." *Judicial Watch v. U.S. Dep't of Transp.*, 950 F. Supp. 2d 213, 216 (D.D.C. 2013) (citing cases). "When communications between an agency and a non-agency aid the agency's decision-making process and the non-agency did not have an outside interest in obtaining a benefit that is at the expense of competitors, the communication must be considered an intra-agency communication for the purposes of FOIA Exemption 5." *Judicial Watch*, 950 F. Supp. 2d at 218-19 (citing *Nat'l Inst. of Military Justice v. U.S. Dep't of Defense*, 512 F.3d 677 680-85 (D.C. Cir. 2008) ("*NIMJ*"); *Lardner v. U.S. Dep't of Justice*, No. 03-0180, 2005 WL 758267, at *1 (D.D.C. Mar. 31, 2015);

see also, e.g., Hooker v. HHS, 887 F. Supp. 2d 40, 55 (D.D.C. 2012) (upholding agency’s withholding of predecisional and deliberative letter from former employee where he “played the same role in the agency’s process of deliberation after his departure that he would have played had he remained”), *aff’d*, No. 13-5280, 2014 WL 3014213 (D.C. Cir. May 13, 2014); *see also Elec. Privacy Info. Ctr. v. DHS*, 892 F. Supp. 2d 28, 46 (D.D.C. 2012) (“In order to be excluded from the exemption, the contractors must assume a position that is ‘necessarily adverse’ to the government.”).⁶

Moreover, maintaining the confidentiality of these communications is important, as disclosure would discourage the sharing of candid thoughts of the reviewers and scientists. Graff Decl. ¶ 55, 64; *see also* Spinrad Decl. ¶¶ 20-21 (explaining importance of confidentiality in developing scientific products). Here, as in *Formaldehyde*, it is “indisputable” that both “reviewers’ comments are expected to be confidential” and “disclosure of reviewers’ comments would seriously harm the deliberative process.” 889 F.2d at 1124 (internal citations and quotations omitted).

Outside of *Science*’s formal peer review process, NOAA scientists welcomed the informal peer review from a limited number of consultants in evaluating the underlying datasets

⁶ *Department of the Interior v. Klamath Water Users Protective Association*, 532 U.S. 1 (2001), holding that Exemption 5 did not protect documents submitted by American Indian Tribes to the Interior Department addressing tribal interests that were then the subject of state and federal water allocation proceedings, does not prevent the application of the consultant corollary here. Rather, the D.C. Circuit “has allowed any communication that aids the agency’s deliberative process to be protected as ‘intra-agency,’” and “*Klamath* only modifies this by requiring that we not protect communications with interested parties seeking a government benefit that is adverse to others seeking that benefit.” *Judicial Watch*, 950 F. Supp. 2d at 218 (footnote omitted).

Also, to fall within the consultant corollary, there is no requirement that an individual must possess a contractual relationship with the agency in question. *See, e.g., NIMJ*, 512 F.3d at 679-87 (deliberative process privilege exempted from disclosure comments received by Department of Defense, in the course of issuing regulations, from non-governmental lawyers who were former high ranking governmental officials or academics or both).

and developing the Hiatus Paper. Graff Decl. ¶ 56; *see also Formaldehyde Inst.*, 889 F.2d at 1125. In the field of climate science, only a small number of scientists have the relevant, specialized expertise, *see* Spinrad ¶ 17, and it is common for scientists to seek input from colleagues both inside and outside the federal government, *id.* ¶ 19. Sometimes experts that are located outside of the federal government have an expertise that can aid the agency. *See id.* ¶ 17. The consultants here, each of whom is highly regarded in his specialized field, Graff Decl. ¶ 58, share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science, *see id.* ¶ 56; *see also Formaldehyde*, 889 F.2d at 1122, quoting *Ryan v. Dep't of Defense*, 617 F.2d 781, 789-90 (D.C. Cir. 1980) (“In the course of its day-to-day activities, an agency often needs to rely on the opinions and recommendations of temporary consultants, as well as its own employees. Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit frank discussion of policy matters and likely impair the quality of decisions.”).

As the *Vaughn* and Mark Graff’s declaration make clear, withholding this informal peer review was also appropriate, as their input was used by NOAA to ensure that only the highest quality scientific product would be released. Tom Karl, for example, asked a scientist affiliated with the National Center for Atmospheric Research to comment on a draft while the paper was in development, and that scientist provided insights and feedback in response. Graff Decl. ¶ 59; *Vaughn* part 1 bates 66-67 (explaining redacted information contained feedback and review of a data analysis for the paper and raises issue for further discussion). Other climate science experts responded to the authors upon learning from *Science* of the pending publication, as commonly occurs after an author submits a high-profile scientific paper for publication. *See* Graff Decl. ¶ 60. Two other experts provided feedback on the Paper, discussed implications of the Hiatus

Paper's conclusion, or provided and discussed data analyses, Graff Decl. ¶¶ 62-63, *Vaughn* part 1 at bates 292-93, which helped provide important feedback about the agency's product and informed the agency's continuous, ongoing work of updating agency datasets and trend analyses, Graff Decl. ¶¶ 62-63; *see Vaughn* part 1 at bates 295-96 (noting that expert's work may be incorporated into a future NOAA analysis). With respect to these types of communications, a general and well-established presumption exists that these communications will not be shared with a wider audience, which is essential to scientific exchanges and the testing and refinement of ideas that help ensure that the agency's scientific products are well developed and robust. *See Spinrad* Decl. ¶ 20. Disclosing this material could inhibit candid discussions and exchanges and chill the open and frank exchanges upon which NOAA scientists rely. *See Graff* Decl. ¶ 64.

In sum, NOAA's *Vaughn* and declarations make plain that the agency appropriately applied Exemption 5 to redact and withhold information protected by the deliberative process privilege.

III. NOAA Properly Withheld Information Under Exemption 6

Exemption 6 protects the privacy of individuals from unwarranted invasion. Exemption 6 allows the withholding of information about individuals in "personnel and medical files and similar files" when the disclosure of such information would constitute a "clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Exemption 6 requires the agency to balance the individual's right to privacy against the public's interest in disclosure. *See U.S. Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976); *Reed v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991). When weighing the public interest involved in disclosure, the court considers: (1) whether disclosure would serve the "core purpose" for which Congress enacted the FOIA. *i.e.*, to show "what the government is up to," and (2) the public interest in general, not particular interests of

the person or group seeking the information. *U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 750, 775 (1989).

Here, Exemption 6 has been applied to protect information in which individuals have a recognized privacy interest, specifically, the phone numbers of NOAA scientists. *See, e.g., Vaughn* part 1 at bates 23. Because this information can be identified as applying to a specific individual, the information withheld under Exemption 6 constitutes “similar files” within the meaning of statute; courts have routinely held that phone numbers meet this threshold test. *See, e.g., Judicial Watch, Inc. v. U.S. Dep't of State*, 875 F. Supp. 2d 37, 47 (D.D.C. 2012); *Smith v. Dep't of Labor*, 798 F. Supp. 2d 274, 283 (D.D.C. 2011); *Lowy v. IRS*, No. C 10-767, 2011 WL 1211479, at *16 (N.D. Cal. Mar. 30, 2011).

This threshold test having been met, the next step is to compare the privacy interest at stake with the benefit disclosure would provide toward the public’s understanding of how government operates. *Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994). Here, there is a substantial privacy interest at stake in preventing the burden of unsolicited phone calls and harassment. *See Moore v. Bush*, 601 F. Supp. 2d 6, 14 (D.D.C. 2009); *United Am. Fin., Inc. v. Potter*, 667 F. Supp. 2d 49, 65-66 (D.D.C. 2009); *cf. Shurtleff v. EPA*, 991 F. Supp. 2d 1, 18 (D.D.C. 2013) (protecting email address). By contrast, an individual’s phone number sheds no light on the operations and activities of the agency. NOAA balances the individual’s strong privacy interests against the fact that release of this information would fail to shed any light on the conduct of governmental business, and reasonably concluded that, with regard to the information withheld pursuant to Exemption 6, the individual privacy interests outweighed any public interest in disclosure. Graff Decl. ¶ 66. *See FLRA*, 510 U.S. at 497 (“We must weigh the privacy interest . . . in nondisclosure . . . against the only relevant public interest in the FOIA

balancing analysis the extent to which disclosure of the information sought would she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know what their government is up to."). Accordingly, Exemption 6 was properly applied.

IV. NOAA Has Produced All Reasonably Segregable Information

The FOIA requires that, if a record contains information that is exempt from disclosure, any "reasonably segregable" information must be disclosed after deletion of the exempt information, 5 U.S.C. § 552(b), unless the non-exempt portions are "inextricably intertwined with exempt portions." *Mead Data Ctr. v. U.S. Dep't of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977); *Kurdyukov v. U.S. Coast Guard*, 578 F. Supp. 2d 114, 128 (D.D.C. 2008). This provision does not, however, require disclosure of records in which the non-exempt information that remains is meaningless. *See Nat'l Sec. Archive Fund v. CIA*, 402 F. Supp. 2d 211, 221 (D.D.C. 2005) (concluding that no reasonably segregable information existed because "the non-exempt information would produce only incomplete, fragmented, unintelligible sentences composed of isolated, meaningless words"). Consistent with this obligation, NOAA has reviewed each of the documents redacted or withheld and has concluded that there is no additional non-exempt information that may reasonably be segregated and released. *See Graff Decl.* ¶ 67. Accordingly, no further non-exempt material is subject to release.

CONCLUSION

NOAA has conducted an adequate search for documents responsive to Plaintiff's request, and properly withheld information exempt from disclosure under Exemptions 5 and 6. Furthermore, all reasonably segregable information has been released to Plaintiff. For these reasons, the Department of Commerce respectfully requests that summary judgment be entered in its favor.

Dated: December 15, 2016

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF UNITED STATES
DEPARTMENT OF COMMERCE’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h)(1), the following is a statement of material facts as to which the movant, the United States Department of Commerce (“the Department”), contends there is no genuine issue:

1. Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change released a report in stages that concluded that the upward global surface temperature trend from 1998-2012 was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) ¶ 9.
2. The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” Graff Decl. ¶ 9.
3. The National Centers for Environmental Information (“NCEI”) at NOAA produces and maintains datasets for global ocean areas and global land areas. Graff Decl. ¶ 6.
4. NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. Graff Decl. ¶ 5.

5. NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. Graff Decl. ¶ 7.
6. On June 4, 2015, a study authored by NOAA scientists was published in *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Graff Decl. ¶ 23.
7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. Graff Decl. ¶ 10.
8. Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Graff Decl. ¶ 11.
9. Karl sought feedback on the draft paper, and a team of scientists at NOAA formed to develop a manuscript. *See* Graff Decl. ¶¶ 11-13.
10. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers’ work, and so on. Graff Decl. ¶ 13.
11. Such collaboration via discussions and drafts is standard practice at NCEI. Graff Decl. ¶ 13.
12. In December 2014, the authors submitted the draft paper to the journal *Science*. Graff Decl. ¶ 14.

13. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. Graff Decl. ¶ 20.
14. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See* Graff Decl. ¶ 21.
15. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. Graff Decl. ¶ 23.
16. Plaintiffs' FOIA request, dated October 30, 2015, sought in relevant part:
 1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
 2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
 3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.Graff Decl. ¶ 24; *see also* ECF No. 8-1.
17. Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25.
18. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. Graff Decl. ¶ 25.

19. During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. Graff Decl. ¶ 26.
20. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. Graff Decl. ¶ 26.
21. The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2.
22. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” Second Joint Status Report, ECF No. 10 at 2; Graff Decl. ¶ 27.
23. NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. Graff Decl. ¶ 33.
24. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. Graff Decl. ¶ 35.
25. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. Graff Decl. ¶¶ 36-38.

26. One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. No additional records responsive to this request from that author are known to have existed following his retirement. *See* Graff Decl. ¶ 36 n.1.
27. There were no common areas at NCEI for NOAA to search. Graff Decl. ¶ 37.
28. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. Graff Decl. ¶ 44.
29. On May 27, 2016, NOAA produced 102 pages of material in its entirety and 90 partially redacted pages. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2
30. NOAA informed Plaintiff at that time that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29
31. Upon further review of the withheld information, NOAA made two supplemental productions. *See* Graff Decl. ¶¶ 30-31.
32. On September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's phone number), Graff Decl. ¶ 30.
33. Contemporaneously with this filing (on December 15), NOAA is releasing an additional 62 records. Graff Decl. ¶ 31.
34. NOAA withheld information pursuant to FOIA Exemption 5 and the deliberative process privilege. *See Vaughn Index.*

35. NOAA withheld information pursuant to FOIA Exemption 6. *See Vaughn* Index.

Dated: December 15, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2016, I filed the attached electronically with the Clerk of the United States District Court for the District of Columbia through the CM/ECF system, which caused the following counsel of record to be served by electronic means:

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Attorney for Plaintiff

/s/ Kevin M. Snell

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF MARK H. GRAFF

Pursuant to 28 U.S.C. § 1746, I, Mark H. Graff, declare and state as follows:

1. I am currently the Freedom of Information Act (FOIA) Officer for the National Oceanic and Atmospheric Administration (NOAA), which is a part of the United States Department of Commerce (DOC). I have occupied this position since September 6, 2015. My primary duties include management of requests submitted to NOAA for records made under both the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a (PA). In that capacity, I oversee NOAA's receipt and log-in of in-coming FOIA requests, the tasking and coordination of searches for responsive records, and review of out-going responses.

2. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, upon conclusions and determinations reached and made in accordance therewith, and upon my personal examination of

the withheld and redacted documents. Additionally, this declaration includes the search terms, locations and parameters agreed upon with the plaintiffs and utilized by those who conducted the search. I am personally familiar with Plaintiff Judicial Watch's FOIA request, which is at issue in this civil action. I submit this declaration in support of a motion for summary judgment filed by the Department of Commerce in the above-captioned lawsuit.

3. This declaration provides background information on the development of a paper entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* ("Hiatus Paper" or "the Paper"), which was published in June 2015 in the journal *Science* and is the focus of the FOIA request at issue in this case. It also explains NOAA's search for records responsive to Plaintiff's FOIA request and the FOIA exemptions applied in processing the responsive records. A *Vaughn* index (Exhibit 1) provides a detailed description of information withheld by NOAA and challenged by Plaintiff, as well as NOAA's basis for those withholdings.

I. BACKGROUND

4. The National Centers for Environmental Information (NCEI), located within the NOAA's National Environmental Satellite, Data, and Information Service (NESDIS), develops use-inspired datasets, products and reports that describe average weather conditions (and changes therein) over the United States and the globe. NCEI acts as the "Nation's Scorekeeper" regarding the trends and anomalies of weather and climate, focusing on essential climatic elements such as temperature and rainfall, as well as extreme events such as hurricanes and droughts.

5. NCEI produces and maintains datasets for global ocean areas and global land areas. Changes in surface temperature over long periods are studied using several datasets that are continuously maintained and updated. There are separate datasets for the ocean and the land, which are then merged to create a global dataset.

6. Scientists throughout the government, including at agencies other than NOAA and researchers outside of the government, use NOAA's temperature datasets for a variety of purposes, including for climatic research and climate assessments. NCEI scientists are continually working on improving these datasets to provide scientists and the public with the most up-to-date and accurate information.

7. NCEI scientists periodically interpret and analyze global datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. NCEI scientists use the most recent information from these datasets to propose new scientific theories and also re-evaluate earlier conclusions reached within the scientific community in light of new or updated data.

8. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data, work which is consistent with the mission of NOAA. Nine NOAA scientists contributed to this paper: Thomas Karl (the lead author), Dr. Anthony Arguez, Dr. Boyin Huang, Mr. Jay Lawrimore, Mr. James McMahon, Dr. Matthew Menne, Dr. Thomas Peterson, Dr. Russell Vose, and Dr. Huai-min Zhang. Thomas Karl is the former Director of NCEI. Jay Lawrimore, Dr. Russell Vose, and Dr. Huai-min Zhang are supervisory scientists at NCEI. Dr. Anthony Arguez and Dr. Matthew Menne are climate scientists at NCEI. Since the publication

of the paper, Dr. Thomas Karl and Dr. Thomas Peterson have retired, and Mr. James McMahon no longer works at NCEI.

9. The Intergovernmental Panel on Climate Change (IPCC) released a report in stages between September 2013 and November 2014 that concluded that the upward global surface temperature trend from 1998-2012 was lower than the upward global surface temperature trend from 1951-2012. This apparent observed slowing was dubbed the “hiatus.”

10. There were significant developments related to the alleged “hiatus” in the two years immediately following the release of the IPCC report. In particular, both 2013 and 2014 were among the top-five warmest years on record for the globe. In addition, NOAA scientists made significant improvements to its sea surface temperature dataset, one of the largest being a correction that accounted for the difference in data collected from buoys and ships. (Until the mid-1970s, ships were used to measure sea surface temperatures; since then, buoys have increasingly been used.) Scientists developed a method to correct for the difference between these two observing systems, and incorporated those corrections into its dataset and subsequently the paper that is the subject of this request.

11. On or about October 31, 2014, Director Karl shared with a group of NOAA scientists a draft of a paper that he had worked on himself, inspired by some of the papers exchanged previously by the NCEI scientists. The draft developed an idea for properly accounting for the “hiatus,” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Director Karl asked the scientists to provide feedback to his draft.

12. The scientists who received the draft responded with feedback in various forms, including exchanging drafts of the paper with edits done via track changes and sending emails providing feedback.

13. Until the paper was submitted to *Science*, many drafts and revisions were exchanged along with emails and one-on-one discussions about various aspects of the paper, including: suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers' work, and so on. Such collaboration via drafts and discussions in emails and orally is standard practice at NCEI.

14. On or about December 23, 2014, a NOAA author submitted the draft paper to *Science* via an online portal.

15. *Science* follows a formal peer review process that is described on their public website. See <http://www.sciencemag.org/authors/peer-review-science-publications>. Peer reviewers are subject matter experts in the topic of the submitted paper who are able to use their expertise to evaluate the scientific rigor and merit of the paper.

16. Peer reviewers provide feedback on an array of issues, including making an overall recommendation as to whether the paper should be published, in view of *Science*'s mission and also providing more detailed critique on a range of issues. These issues include the technical rigor of the data and methods used and whether the conclusions of the report are novel or similar to work already published. See <http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

17. According to *Science*, their peer review process is anonymous. The identities of reviewers are never revealed to authors, and reviewers are instructed not to identify themselves to any entity, including the press. Reviews are shared only with the author, potentially other reviewers (for cross-comment), and the Board of the journal. See <http://www.sciencemag.org/authors/peer-review-science-publications>.

18. Reviewers are expressly instructed to treat the submitted manuscript as privileged and confidential:

The submitted manuscript is a privileged communication and must be treated as a confidential document. Please destroy all copies of the manuscript after review. Please do not share the manuscript with any colleagues without the explicit permission of the editor. Reviewers should not make personal or professional use of the data or interpretations before publication without the authors' specific permission (unless you are writing an editorial or commentary to accompany the article).

<http://www.sciencemag.org/authors/peer-review-science-publications>.

19. This is reinforced in the journal's Instructions to Peer Reviewers of reports, which states:

Confidentiality: We expect reviewers to protect the confidentiality of the manuscript and ensure that it is not disseminated or exploited. Please destroy your copy of the manuscript when you are done. Only discuss the paper with a colleague with permission from the editor. We do not disclose the identity of our reviewers.

<http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

20. The authors received via email the first round of reviews from *Science* on or about February 26, 2015. In this case, *Science* sent the manuscript to five peer reviewers. These reviewers provided their comments anonymously to NOAA through *Science*, as is standard in the peer review process for *Science*.

21. After determining the best response to all of the peer reviewer comments, the authors submitted the revised manuscript and a response to reviewer comments to *Science* via the online submission portal on or about March 27, 2015. See Categories C and D of part 2 of the *Vaughn* Index.

22. On or about April 22, 2015, the authors received the second round of reviews from *Science* via email. The authors developed responses to this second round of comments, made revisions accordingly, and submitted the revised manuscript and response to reviewer comments to *Science* via the online portal on or about May 5, 2015. *See id.*

23. After submitting the revised manuscript, the authors received notice that it would be published, received galley proofs, and approved them. On June 4, 2015, the paper was published online on the *Science* website. This was followed up by publication in the printed volume of *Science* on June 26, 2015 (Volume 348, Issue 6242, at 1469).

II. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S REQUEST

24. Plaintiff's FOIA request was addressed to NOAA, which is located within the Department of Commerce ("the Department"). The request sought, in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.

3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

25. When NOAA officials first reviewed the request, they determined that it did not reasonably describe the records sought. NOAA and the Department, through counsel, conferred with Plaintiff's counsel to negotiate a clear description of the materials sought.

26. During the course of those discussions, NOAA indicated to Plaintiff that it understood Plaintiff's request to reflect an interest in the Hiatus Paper. Defendant suggested Plaintiff modify the FOIA request to call for a search for all documents and communications referring to the Hiatus Paper from October 1, 2014 through June 4, 2015. Defendant offered to search the files of the nine authors of the Study. Plaintiff confirmed its interest in the Hiatus Paper, but indicated that it sought only records referring to the topics listed in its initial FOIA request.

27. The parties ultimately "reached an agreement regarding the scope of the request and the relevant search parameters," which was memorialized in the Second Joint Status Report, submitted to this Court on March 1, 2016. Regarding the documents at issue in this litigation, the parties agreed that:

"Defendant will search the records of the nine authors of the June 4, 2015 study entitled Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus published in Science ("Karl Study") for records referring to the Karl Study and that contain the following search terms:

(1) "NMAT" and "Night Marine Air Temperatures";

(2) "ISTU", "ICOADS", and "sea ice";

(3) "satellite", "Advanced Very High Resolution Radiometer", "AVHRR", "Advanced Microwave Scanning Radiometer", and "AMSR".

For items 1, 2, and 3 of Plaintiff's FOIA request, the timeframe for the searches will be October 1, 2014 to June 4, 2015."

See Second Joint Status Report, ECF No. 10.

28. In the Third Joint Status Report, submitted to this Court on March 22, 2016, the parties agreed that NOAA, through the Department, would produce responsive, non-exempt records, as described above, to Plaintiff by May 27, 2016. *See* ECF No. 11.

29. On May 27, 2016, the Department released 102 pages of material in its entirety and 90 partially redacted pages. Defendant withheld in their entirety 8,013 pages of records. *See* May 27 Cover Letter (Exhibit 2); *see also* Fourth Joint Status Report, ECF No. 12. In that letter, NOAA informed Plaintiff that "[b]ecause the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records." Exhibit 2.

30. NOAA made a supplemental release of records on September 16, 2016, providing Plaintiff with an additional 44 pages of released material after further review the records identified and described in the letter accompanying the May 27, 2016, production, 7 of which were partially redacted because they included Tom Karl's personal telephone number.

31. After the September release, NOAA continued to evaluate the responsiveness and exemption status of the records that had been identified. Contemporaneously with this filing (on December 15), NOAA is releasing another 62 records providing Plaintiff with additional records that were previously withheld.

32. Because of the further segregation and responsiveness review NOAA conducted that led to the release of additional material to the Plaintiff, the page counts in the May 27 cover letter (and also the Fourth Joint Status Report) originally provided to Plaintiff are no longer accurate. A complete listing of all records withheld in full or in part pursuant to an exemption is reflected in the attached *Vaughn* Index.

II. THE SEARCH PROCESS

33. After NOAA and Plaintiffs, through counsel, reached an agreement as to the terms of the search for this FOIA request, it was determined that the records requested resided within one office: NCEI. NCEI's headquarters is located in Asheville, North Carolina. This determination was based on the fact that all of the agreed-upon custodians work or had worked within NCEI during the time in which responsive records were created.

34. The nine authors of the Hiatus Paper were Thomas R. Karl, Anthony Arguez, Boyin Huang, Jay H. Lawrimore, James R. McMahon, Matthew J. Menne, Thomas C. Peterson, Russell S. Vose, and Huai-Min Zhang.

35. NOAA instructed eight of the nine authors (record custodians) that were still within NCEI to conduct a search in accordance with the parameters agreed to by the parties and memorialized in the Second Joint Status Report. NOAA specified that custodians must search their email, electronic, and paper records.

36. Each records custodian still at NCEI¹ searched his own records in accordance with these instructions. As such, all search terms and parameters of the search as agreed upon by the Plaintiff were utilized by NOAA in the search of the files where responsive records were likely to be filed.

37. There were no common areas to be searched at NCEI because the authors all kept their own files separate.

38. After the custodians collected their records, they were forwarded for responsiveness and exemption review.

39. The search conducted was reasonably calculated to uncover all relevant, non-duplicative documents.

40. The Department compiled two sets of bates-numbered files, which included, in addition to the partially redacted and fully withheld email records, placeholder pages, which are discussed further in Paragraph 49. One bates-numbered file reflects the email records, and the other bates-numbered file reflects documents, as contained on parts 1 and 2 of the *Vaughn*.

41. Each record was evaluated separately for responsiveness, and each email was deemed to be one record.

42. In the case of an email with attachment(s), responsiveness determinations were made independently for that email and any attachment(s) to that email.

43. For email records that were joined with other emails in a chain, NOAA deemed responsive any email that related to the Paper and contained an agreed-upon search term as well

¹ One custodian (Thomas Peterson) had retired by the time of the search. His archived email inbox and outbox were searched by another author who was still with NOAA at the time. No additional, non-duplicative records created by Mr. Peterson that are responsive to this request are known to have existed following the retirement of Mr. Peterson.

as other, surrounding emails that were related to or provided important context for the email that contained the search term. If an email appeared to directly relate to the subject matter of the request in an email containing the search term, a case-by-case determination was made in good faith and in the effort to maximize transparency as to whether that record was responsive even though not technically within the search terms outlined in the Second Joint Status Report.

44. The search was reasonably calculated to uncover all relevant documents and there are no known locations where additional, non-duplicative, responsive material is likely to be found. Accordingly, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched.

III. The Vaughn Index

45. I have read the *Vaughn* index attached as Exhibit 1 and reviewed the documents referenced in that index. Based on my review of the documents and on information provided me in the course of my official duties, I have determined that the material redacted from the referenced documents falls within the enumerated FOIA exemptions identified in the index.

46. The *Vaughn* index is divided into two parts. The first part covers responsive emails that were withheld or redacted. It identifies each record by Bates stamp numbers (which correspond to the numbering on records provided to Plaintiff), the originator, the recipient(s), the date of the record, the title of the email, the exemption invoked, and the basis for withholding.

47. Due to how the email records are stored in and were printed from the user's email accounts, some email records are duplicative but certain copies truncate the metadata for that record email (e.g., the sender, recipient, subject line, who was cc'd on the records). Sometimes

NOAA was able to reconstruct the information by looking to duplicate instances that were printed differently, or by going to the original files. We have generally inferred that the subject line that prints at the top of the printed email chain carried through for individual email records connected to that string of emails.

48. The second part of the *Vaughn* index covers non-email documents that were withheld in their entirety, except for a relatively small number of documents that were released to Plaintiffs upon further review. These documents consist almost exclusively of five categories of records. Records that fell into one of the five categories are labeled in the *Vaughn* index by a letter that corresponds to a category. The few exceptions that do not fall into one of the five categories have a more detailed description.

49. The *Vaughn* index reflects occasional “gaps” in the Bates stamp numbering. For example, *Vaughn* part one reflects an entry for bates page 1, and the next entry is for bates page 4. Such “gaps” exist for three reasons. First, not all pages had redacted information. Only pages with redacted information are accounted for on the *Vaughn*. Second, NOAA, in an effort to be transparent during production, included pages that served as “placeholders” for records in email chains that were removed because those records were either non-responsive or were fully withheld under Exemption 5. For example, if one page with responsive records was produced with redactions, followed by four fully withheld pages of records, the four fully withheld pages were represented in the production by a placeholder page that indicated four pages of material had been withheld as either not responsive or as exempt under Exemption 5. That placeholder page was bates stamped during the initial production, but NOAA has not listed it in the *Vaughn*

index. And third, NOAA removed bates-marked documents that were non-responsive that had been inadvertently bates stamped during the initial production. The withheld records, if responsive, are represented elsewhere in the *Vaughn* index.

50. As reflected in the first part of the *Vaughn* index, NOAA withheld or redacted emails under Exemption 5 because they are protected by the deliberative process privilege. *See, generally, Vaughn* part 1. These records are inter-agency or intra-agency communications. The bulk of this information reflects the predecisional and deliberative exchange of ideas and recommendations among scientists within and outside NOAA as NOAA scientists developed and edited the Hiatus Paper or discussed the underlying analysis of the datasets for purposes of developing the paper. The information also includes communications among NOAA personnel carrying out related agency deliberations such as development of public communications and presentations to Congress. The communications are, unless otherwise indicated, among NOAA personnel and reflect agency deliberations or input to agency determinations. These deliberations were in preparation for agency decisions, including how to analyze and present the data and interpretation. A relatively small number of the deliberative communications reflect input from non-federal scientists who were contacted either by one of the authors or by the journal *Science* to provide feedback and input on the Paper. These non-federal scientists provided NOAA's scientists input for the agency's ongoing processes of developing the Hiatus Paper, as well as providing input for the agency's potential updating of underlying datasets and analysis based on those datasets. Additionally, one scientist provided input to inform the agency's development of a communications plan for the paper.

51. In addition to the emails redacted or withheld, NOAA withheld drafts of the Hiatus Paper. *See Vaughn* part two Category A. These documents are inter-agency or intra-agency drafts. This category includes the drafts of the “supplementary materials” that accompanied the Hiatus Paper and were made available for download by *Science* upon publication of the Paper. Category A in the *Vaughn* Index sometimes lists the draft paper text, figures and supplementary materials as one entry and sometimes separately. These were pre-decisional drafts that contained the opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or expert reviewers’ comments on earlier drafts of the paper. Disclosure of deliberative draft documents that were not ultimately finalized or adopted by NOAA risks confusing the public concerning NOAA’s position and also risks data or statements being taken out of context. Disclosure of these deliberative draft materials would also seriously undermine the quality and integrity of NOAA’s decisionmaking process, by deterring NOAA staff or experts outside the agency who are collaborating in development of the agency’s work from expressing their candid views on the development of data analysis and presentation.

52. NOAA also withheld documents that contain questions for discussion and draft graphs that were circulated by an author and created for author discussions during the development of the Hiatus Paper. *See Vaughn* part two Category E. These records are inter-agency or intra-agency documents. These documents are deliberative and pre-decisional, as they

reflect NOAA scientists' deliberations as to what constitutes the best data analysis and presentation for the Hiatus Paper.

53. NOAA also withheld drafts of a cover letter from Tom Karl to *Science* magazine in response to peer review comments. *See Vaughn* part two Category B. These records are inter-agency or intra-agency drafts. These drafts are predecisional and deliberative in that they include discussions and exchanges among authors in determining what to include, and how to present, their formal letter to accompany their peer review responses. The draft cover letters to *Science* contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' approach had not been finalized at that point.

54. NOAA also withheld draft responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. *See Vaughn* Index part two Category C. These records are inter-agency or intra-agency drafts. These drafts reflect pre-decisional discussions and proposed responses to peer review comments. The drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers. These drafts helped the NOAA authors determine how best to respond to comments provided during the peer review process initiated by the submission of the Hiatus Paper to *Science* for potential publication. These documents are internal, pre-decisional drafts that reflect the view of NOAA authors as to how to present their response to peer review feedback.

55. NOAA also withheld the final responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. See *Vaughn* Index Part 2 Category D. These records are inter-agency or intra-agency documents. These documents are predecisional and deliberative because they are responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. The responses were submitted as part of a process to assist in the authors' deliberations regarding whether and in what form to publish the paper. Confidentiality is important to the peer review process, and disclosure of the responses to peer reviews would discourage the sharing of candid thoughts of both the reviewers and of the scientists.

56. In addition to this formal peer review, NOAA's authors also welcomed the assistance of informal peer review from a limited group of scientific experts in evaluating the underlying datasets and developing the Hiatus Paper. It is common for NOAA scientists to seek input from other qualified experts to get a second opinion on a working hypothesis or to provide expertise that an author's affiliated organization may lack. Sometimes those scientists are employed outside the federal government, but they share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science.

57. This collegial relationship and shared goals lays the groundwork for an author to reach out for the kind of honest, confidential feedback necessary to formulate a sustainable, justified scientific conclusion.

58. Each of these scientists who offered their assistance is highly regarded in their specialized fields. Their prior work represents a portion of the prior published literature on the

alleged hiatus. Some of those works were consulted by the team in developing the “hiatus” paper and were cited as references in it.

59. One of the outside scientists who contributed (and is listed in the “Acknowledgements” section of the Hiatus Paper) is Dr. Gerald (Jerry) A. Meehl, an affiliate with the National Center for Atmospheric Research (NCAR), which is a National Science Foundation Federally Funded Research and Development Center. *See* <https://www2.ucar.edu/about-us/quick-facts>. In November 2014, Director Karl emailed Dr. Meehl and invited him to comment on drafts of the paper, and he provided insights and feedback in response. *See* Bates 66 (11/27/14) (released).

60. If a paper is expected to get an unusual amount of attention, a journal may seek pre-publication reactions from experts in the field outside of that journal’s formal peer review process. On occasion, those experts who are contacted by the journal will then directly communicate with the author(s) of the article and share their thoughts on the article.

61. These communications provide important feedback to the authors on the Hiatus Paper and often provide information, relied upon by NOAA, about the external expert’s own related recent or ongoing work. These communications provide input to the continuous, ongoing work to update and improve datasets and trend analyses, as described in Paragraphs 5 through 7.

62. One outside scientist who provided input (and is cited in the references for the Hiatus Paper) is Dr. Kevin E. Trenberth, who (like Dr. Meehl) is also affiliated with the NCAR. Dr. Trenberth was contacted for his expertise by a journalist prior to publication of the Hiatus Paper and asked to provide comment on the paper. Dr. Trenberth then contacted Director Karl

by email to provide feedback and discuss implications of the conclusion in light of other literature. *See* Bates 379 (6/1/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve datasets and trend analyses. In part, this information was also provided to inform NOAA in its deliberations as it formulated its public communications messaging for the Hiatus Paper. *See* Bates 381-382 (6/1/15).

63. Last, Dr. Kevin Cowtan, who is affiliated with the University of York in the United Kingdom, is an outside scientist who contacted Dr. Boyin and Director Karl, after being contacted by a writer at *Science* who was seeking comment on the paper before publication, during the embargo period. *See* Bates 292-293 (6/2/15). Those emails indicate that all participants understood and respected that there was an embargo on publicly disseminating or discussing the work until it was officially released on June 4. *See, e.g.*, Bates 295 (6/2/15). Director Karl indicated in an email that he would like to continue to review and incorporate Dr. Cowtan's work in NOAA's ongoing work. *See* Bates 295-296 (6/2/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve our datasets and trend analyses.

64. Disclosure of any of this information that is pre-decisional and deliberative would inhibit candid internal discussions and expressions of ideas, recommendations, criticism, and judgments regarding the development of scientific theories and presentations of information to the public and to Congress. Disclosure of the details of these confidential discussions, drafts, and responses, could reasonably be expected to chill the open and frank exchange of comments

and opinions that occurs between NOAA scientists and a limited group of qualified outside experts at such times. It would also inhibit candid internal discussions and the expression of recommendations and judgments regarding preferred courses of action for agency personnel.

65. To the extent the redacted or withheld information contains some factual material, the authors' selection and presentation of that factual material reflects the agency's deliberative process and is therefore protected from disclosure. Singling out a particular data point in the course of a deliberative discussion reflects a preliminary judgment or argument rather than an assertion of scientific fact. There is a risk of misconstruing or taking out of context an instance where one piece of information has been singled out for purposes of an informal discussion.

66. With regard to information withheld pursuant to exemption (b)(6), NOAA has determined that the individual privacy interests outweighed the public interest in disclosure.

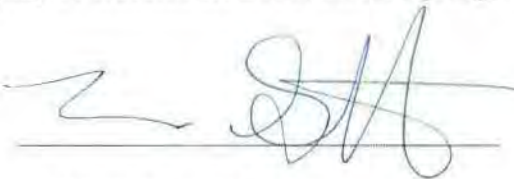
67. I am further satisfied that NOAA has reasonably concluded that there was no additional non-exempt, responsive information that could be reasonably segregated and released to the plaintiff.

IV. CONCLUSION

In summary, the Department conducted thorough searches of all components that were reasonably likely to maintain responsive records and withheld only reasonably segregable information under exemption (b)(5) and (b)(6). Additionally, the search was reasonably calculated to uncover all relevant documents, and there are no known locations where additional, non-duplicative, responsive material is likely to be found.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 14th day of December, 2016, Silver Spring, Maryland.

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a large, looped 'G' and 'A'.

Mark H. Graff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 1 to Declaration of Mark Graff

Vaughn Index Part 1: Emails

Bates Page	Originator	Addressee	Date	Time	Title	Exemption	Released Status	Basis
1	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	NOAA affiliate asking NOAA scientist for clarification on data results from the paper prior to publication for development of communications materials related to the paper.
4	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
6	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	NOAA scientist sharing draft data analysis, based on scientist discussions, for development of the paper with other scientists.
14	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made to the paper. Email is duplicate of email found on page 102.
14	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of supplemental materials for the paper and discussing edits made to the paper.
14-15	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made for the development the paper.

15	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-hiatus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
15	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
17	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist discussing edits to be made for development of the paper. Asking another NOAA scientist about work to be done for the paper.
19	Peterson, Thomas C.	McMahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
22	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
22-23	McMahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist asking another scientist for clarification on data analysis conducted for the development of the paper.
23	Zhang, Huai-min	McMahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Personal cell phone number of scientist.
25-26	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.

26	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
27	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
27-28	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
28	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
28-29	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
33	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
37	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.

37-38	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.
38-40	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper (the scientist's responses are inserted into text of earlier email).
41	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
41	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
42	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis and graphics for the paper.
42	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis and graphics for development of the paper with other scientists.
45	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and asking about edits to be made to the paper.

48	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is cut off but text is duplicate of full text on page 42.
48	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48-49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49-50	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
50	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.

50-51	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
51	Menne, Matthew	Lawrimore, Jay; Karl, Thomas R.; Huang, Boyin; Zhang, Hai-min; McMahon, James; Vose, Russell	11/06/2014	10:55 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing proposed language for the paper as well as draft data analysis and graphics for development of the paper. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
53	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
53	Karl, Thomas R.	Huang, Boyin; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
53	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
66-67	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Outside scientist is providing feedback and review of data analysis for the paper in response to request for feedback from Tom Karl (via email that was Released). The outside scientist is providing observations regarding the climatic data used in the paper and raising issues for further discussion and clarification.

67-68	Karl, Thomas R.	Meehl, Gerald	11/29/2014	9:41 AM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Fully Withheld	NOAA scientist is responding to feedback on the hiatus paper provided by outside scientist and discussing data analysis conducted for the development of the paper. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
69	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.
70	Kossin, James P.	Karl, Thomas R.	5/21/2015	11:44 AM	Science paper	(b)(5)	Partially Redacted	NOAA scientist asking paper author offering personal opinion and inquiring about potential data analysis for the paper.
70	Karl, Thomas R.	Kossin, James P.	5/21/2015	11:55 AM	Science paper	(b)(5)	Partially Redacted	Paper author responding to personal opinion of NOAA scientist and sharing his personal opinion on draft data analysis for the paper. Asking if NOAA scientist about involvement future research and data analysis.
75	Karl, Thomas R.	Holdren, John P.	3/26/2015	4:35 PM	Acceptance of your Science Manuscript aaa5632	(b)(5)	Partially Redacted	NOAA scientist sharing release date for paper. NOAA scientist is also discussing future climate research for the agency and asking for opinion of John Holdren on this research and on the possible role of NOAA scientists in this research.
88	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and sharing results of data analysis he conducted for the paper and personal opinion on future research.
88	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	16:20	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist asking other scientists about data to potentially be used in further research study.

88-89	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis for the paper and personal opinion on future research.
100	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
100-101	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
101	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
101-102	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
102	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
104	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is partially cut off. Duplicate of full email found on page 41.

104	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
104	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 48-49.
104-105	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 49.
105-106	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
106	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
106	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.

108-109	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Email addresses are cut off. Duplicate of full email found on pages 66-67.
112	Zhang, Huai-min	Mcmahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Duplicate of page 23.
112	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
112	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
112-113	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 25-26.
113	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
113	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 27.
113-114	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 27-28.
114	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28.
114	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28-29.
116	Karl, Thomas R.	Sessing, Janice; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Partially Redacted	NOAA scientist sharing with other NOAA affiliates his thoughts on presenting the agency's climate change research to Congress.

128	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
128	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
128	Zhang, Huai-min	Mcmahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Duplicate of 23.
128-129	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
129	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
129	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 27.
130	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 27-28.
130	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28.
130	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 28-29.
131	Huang, Boyin	Lawrimore, Jay; Peterson, Thomas C.; Zhang, Huai-min; Mcmahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew	03/06/2015	8:33 AM	SST trend experiment	(b)(5)	Partially Redacted	NOAA scientist is sharing data analysis he conducted for the paper offering his opinion of the best approach to take in the paper.
133	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.

137-138	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 4.
139-140	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis to be used in the paper and asking for clarification on data analysis conducted for development of the paper.
140	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 17.
143	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Kris	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17 th warmest April on record for contiguous U.S.	(b)(5)	Partially Redacted	NOAA scientist discussing agency's climate change research and developing the agency's presentation for Congress.
156	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
156	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
156-157	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 38-40.

157	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
157	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
158	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Duplicate of page 42. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
158	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Duplicate of page 42. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
160	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	Duplicate of page 45.
162-163	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Duplicate of pages 66-67.
164	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
164	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 25-26.

164	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
164	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
166	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.
167	Maycock, Tom	Zhang, Huai-min	05/06/2015	12:58 PM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
234	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
234	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	4:20 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
234-235	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of pages 88-89.
240-241	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
242	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	4:20 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
242	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of pages 88-89.
243	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Mcmahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist sharing opinion on results of data analysis for development of the paper.

243	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	10:03 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of 15.
245	McMahon, James	Arguez, Anthony; Zhang, Huai-min; Karl, Thomas R.	03/25/2015	10:30 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper.
245	Zhang, Huai-min	McMahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper.
245-246	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of the best approach to take in the paper.
246	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of future revisions.
246	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of the best approach to take in the paper.

247-248	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the development of the paper. Scientist is also asking for opinion of another scientist.
249	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	03/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist discussing how to interpret and apply data trends in the paper as well as plans for discussing a related issue at an upcoming call.
249	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
251	Zhang, Huai-min	Peterson, Thomas C.; Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin	03/19/2015	1:34 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Text of email is partially cut off but full text of email is on page 300.
251-252	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
254	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 243.
257-259	Zhang, Huai-min	Menne, Matthew; McMahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/03/2014	10:50 AM	Trend plots	(b)(5)	Fully Withheld	NOAA scientist sharing updated and revised data analysis for the paper with another scientist and indicating what his next step will be.
262	Huang, Boyin	McMahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	03/19/2015	4:02 PM	Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Fully Withheld	Duplicate of page 6.

263	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	NOAA scientist explaining how he will analyze data for development of the paper and explaining next steps by another scientist for the same.
265	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data for the paper.
265-266	McMahon, James	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist asking another scientist to write up a description of the draft analysis to include in the paper and sharing update on draft data analysis and draft figure for development of the paper.
266	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and explaining data analysis for the development of the paper.
266-267	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and draft figures for development of the paper. Scientist is also discussing his next steps for working on the draft paper.
270	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Text of email is partially cut off. Email is duplicate of full email found on page 42.
271	Zhang, Huai-min	Lawrimore, Jay; Karl, Thomas R.; Huang, Boyin; McMahon, James; Menne, Matthew; Vose, Russell	11/13/2014	10:42 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	NOAA scientist sharing edits he made to the paper the in preparation of meeting to discuss the paper.
272	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 265.

272	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
272	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
272-273	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
273	Karl, Thomas	Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist discussing writing of methods section for data analysis methods to use in the paper.
273	Lawrimore, Jay	Karl, Thomas R.; Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/20/2014	10:39 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist is offering his opinion of the best approach to take in the paper and sharing proposed references to use in the paper. Text of email here is partially cut off but full text can be found on page 350.
275-276	Zhang, Huai-min	Menne, Matthew; Mcmahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/03/2014	10:50 AM	Trend plots	(b)(5)	Fully Withheld	Duplicate of pages 257-259.
280	Zhang, Huai-min	Mcmahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 245.
280	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 245-246.
281	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
281	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
281	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	12:05 PM	Fwd: new comparisons	(b)(5)	Fully Withheld	NOAA scientist asking another scientist about potential references to use in developing methods for data analysis for the paper.

281-282	Zhang, Huai-min	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:19 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist sharing sharing potential references to use in developing methods for data analysis for the paper.
282	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	12:56 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist inquiring about status of data analysis to be used in development of the paper.
282	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:58 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist inquiring about status of data analysis to be used in development of the paper.
282	Zhang, Huai-min	Karl, Thomas R.	03/25/2015	12:59 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist discussing sharing of draft data analysis for the development of the paper. Scientist discusses next steps he will take regarding the paper.
282	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin	03/25/2015	12:59 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist discussing sharing of draft data analysis for the development of the paper.
282	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	1:03 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist asking another scientist about data analysis methods used in the development of the paper.
283	Zhang, Huai-min	Karl, Thomas R.	03/25/2015	1:15 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist responding to question about data analysis methods used in development of the paper and awaiting information on another method from another scientist.
283	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.	03/26/2015	8:56 AM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist responding to question about data analysis methods used in draft of the paper.
285	Huang, Boyin	Karl, Thomas R.; Vose, Russell	05/05/2015	8:22 AM	Reference	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and potential references on methods for data analysis to be conducted for the paper.
287	Tepel, Mackenzie	Karl, Thomas R.	5/21/2015	3:45 PM	Re: FYI . . . Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.

287	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
287	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.
287	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
287	Sessing, Janice	Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Karl, Thomas R.; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:28 PM	Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.
289	Vincent, Katy	Karl, Thomas R.	06/03/2015	1:26 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.
289-290	Karl, Thomas R.	Vincent, Katy	06/03/2015	1:34 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA scientist discussing plan for communications with NOAA affiliate and press release in preparation for publication of the paper. Scientist is explaining data and methods in order to create public communications materials.
290	Vincent, Katy	Karl, Thomas R.	06/03/2015	2:21 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.

290	Karl, Thomas R.	Vincent, Katy	06/03/2015	3:29 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA scientist discussing plan for communications and press release in preparation for publication of the paper.
290	Vincent, Katy	Karl, Thomas R.	06/03/2015	3:31 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.
291	Karl, Thomas R.	Holdren, John P.	06/04/2015	10:16 AM	Acceptance of your Science Manuscript aaa5632	(b)(5)	Partially Redacted	NOAA scientist offering opinion on temperature trends assessment and potential future research needs and inquiring about the same.
292	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist responding to data analysis shared by outside scientist as relevant to paper. NOAA scientist is sharing his interpretations and asking for clarification on data analysis and conclusions reached by outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
292-293	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing data analysis he conducted on datasets relevant to the analysis presented in the paper. Scientist is sharing his interpretations and discussing his conclusions. Scientist notes he was contacted by the Journal Science for comment on the NOAA paper. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.

294-295	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:37 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist responding to data analysis shared by outside scientist and explaining how data corrections in the paper were derived. NOAA scientist is sharing his interpretations with the outside scientist and other NOAA scientists and asking for clarification on data analysis and conclusions reached by outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
295	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist is discussing interpretations and conclusions as relevant to analysis in the paper. Scientist is sharing his interpretations and asking NOAA scientists for clarification on data analysis. Scientist references additional, relevant ongoing research. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
295-296	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	3:33 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist acknowledges further ongoing work of outside scientist, indicates that the work would be relevant to inform future NOAA processes to update dataset methodology, and seeks thoughts from outside scientist regarding implications of other scientists' work.
296	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:36 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist commits to continuing the conversation with NOAA scientists regarding ongoing work and noting the further analysis he plans to do relevant to the analysis in the paper in order to provide comment on the paper.

296	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing further analysis he conducted relevant to the analysis in the paper. Scientist is sharing his interpretations and discussing the conclusions he made. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
296	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist forwarding to other NOAA scientists the comments and explanation of further analysis from outside scientist relevant to the analysis in the paper. NOAA scientist provides translation of short-hand used by the outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
296-297	Cowtan, Kevin	Huang, Boyin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Ruedy, Reto	06/07/2015	3:08 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing further data analysis he conducted on specific data sets as relevant to the paper. Scientist is sharing his interpretations and discussing the conclusions he made for NOAA's consideration. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
298-299	Peterson, Thomas C.	Menne, Matthew; McMahan, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
299-300	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	03/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 249.
300	Zhang, Huai-min	Peterson, Thomas C.; Menne, Matthew; McMahan, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin	03/19/2015	1:34 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 6. Here email addresses are partially cut off but full email is on page 6.

302	Zhang, Huai-min	Mcmahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 42.
302	Karl, Thomas R.	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 42.
302	Zhang, Huai-min	Karl, Thomas R.; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Email text is partially cut off. Duplicate of full text of email found on page 41.
303-304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
304	Mcmahon, James	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 265.
304	Karl, Thomas	Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
307	Zhang, Huai-min	Menne, Matthew; Mcmahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/3/2014	10:50 AM	Re: Trend plots	(b)(5)	Fully Withheld	Email text is partially cut off. Duplicate of full text of email found on pages 257-259.

309	Huang, Boyin	Lawrimore, Jay; Peterson, Thomas C.; Zhang, Huai-min; McMahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew	03/06/2015	8:33 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is offering his interpretation of experiments conducted in development of the paper.
309-310	Peterson, Thomas C.	Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	8:50 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist sharing references in developing the paper.
310	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:00 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is offering his opinion in developing the paper.
310-311	Peterson, Thomas C.	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:02 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another NOAA scientist and offering his interpretation of data analysis used in developing the paper.
311	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:21 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is asking other NOAA scientists for clarification regarding data analysis for development of the paper.
315	McMahon, James	Menne, Matthew	03/24/2015	12:32 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is asking other NOAA scientist for clarification regarding data analysis for development of the paper.
315	Menne, Matthew	McMahon, James	03/24/2015	12:35 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to inquiring and explaining his understanding on data analysis for development of the paper.
315	McMahon, James	Menne, Matthew	03/24/2015	12:36 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to a question from another NOAA scientists regarding data analysis for development of the paper.

317	Zhang, Huai-min	Mcmahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 245.
317	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 245-246.
318	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
318	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
318	Zhang, Huai-min	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:19 PM	Fwd: new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 281-282.
320	Huang, Boyin	Karl, Thomas R.; Vose, Russell	05/05/2015	8:22 AM	Reference	(b)(5)	Fully Withheld	Duplicate of page 285.
322	Sessing, Janice	Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Karl, Thomas R.; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:28 PM	Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
324	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
324	Sessing, Janice	Karl, Thomas R.; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:56 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing the agency's presentation for Congress.

324	Vose, Russell	Karl, Thomas R.; Sessing, Janice; Hammer, Gregory; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	7:47 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
324	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
325	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287. Here email is partially cut off, but full text can be found on page 287.
325	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
325	Sessing, Janice	Gregg, Margarita; Karl, Thomas R.	5/11/2015	6:28 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
330	Vincent, Katy	Karl, Thomas R.	06/03/2015	1:26 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 289.
330-331	Vincent, Katy	Karl, Thomas R.	6/3/2015	2:21 PM	Re: Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 290.

331	Karl, Thomas R.	Vincent, Katy	06/03/2015	1:34 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of pages 290-291.
331	Vincent, Katy	Karl, Thomas R.	6/3/2015	3:31 PM	Re: Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 291.
334-335	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Fully Withheld	Duplicate of pages 66-67.
335	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Menne, Matthew; Vose, Russell; McMahon, James; Lawrimore, Jay	12/1/2014	7:48 PM	Re: Our Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing how to respond to reviewer feedback and is offering his opinion of the best approach to take for development of the paper.
338	Matthews, Jessica	Peterson, Thomas	3/6/2015	8:32 AM	Fwd: new confidence intervals	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing data analysis methodology to be used in development of the paper.
339	Peterson, Thomas C.	Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	8:50 AM	SST trend experiment	(b)(5)	Fully Withheld	Email addresses are partially cut off. Duplicate of full email on pages 309-310.
339	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:00 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 310.
340	Peterson, Thomas C.	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:02 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 310.

340	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:21 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 311.
341	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 243.
342	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
342	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
342	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
342	Sessing, Janice	Gregg, Margarita; Karl, Thomas R.	5/11/2015	6:28 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Email is partially cut off. Duplicate of full email found on page 287.

343, 348	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343, 347	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
343-344	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
344, 347	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.
344	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
344-345	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.
348	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
350	Zhang, Huai-min	Lawrimore, Jay; Karl, Thomas, R.; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/21/2014	9:04 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing and discussing drafts for development of the paper, including status of the paper.

350	Lawrimore, Jay	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/20/2014	10:39 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
350	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
350	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 274.
350-351	McMahon, James	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
351	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
351	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
353-354	Zhang, Huai-min	Menne, Matthew; McMahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/3/2014	10:50 AM	Re: Trend plots	(b)(5)	Fully Withheld	Duplicate of pages 257-259.
362-363	Zhang, Huai-min	McMahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing how to respond to reviewer feedback and is offering his opinion of the best approach to take in the paper as well as providing information on data for purposes of discussion.
363-364	Huang, Boyin	McMahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	NOAA scientist explaining data that he is sharing for development of the paper.

365-366	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
368	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.
368-369	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:24 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
371	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.
371-374	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
377-378	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
378	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.

379	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	12:38 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist contacts NOAA scientist, noting that he was contacted for comment on the paper, referencing prior work bearing on the issues reviewed in the paper, and explaining the analysis used in the outside scientist's work. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
379-380	Karl, Thomas R.	Trenberth, Kevin; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Arguez, Anthony	6/1/2015	1:19 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist explains scope of hiatus paper to outside scientist and noting relationship to existing literature. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
380	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	1:40 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist provides comments in response to hiatus paper including evaluation of significance of the paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
380-381	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	2:26 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist responds to various points made in the outside scientist's comments, including pointing to figure in paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
381-382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	2:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist clarifies data underlying prior work, clarifies one of his comments on hiatus paper, and explains that reason for sharing the comments was to help inform agency process of developing public communications relating to paper.

382	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	3:14 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist compares conclusions in outside scientist's prior work with conclusions in hiatus paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	2:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Duplicate of pages 381-382.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:37 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist cites figure in prior work to support his position. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:40 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist cites additional figures from another prior work to support his position. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382-383	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	3:49 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist requests clarification of finding from outside scientist's prior work and suggests potential explanation. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
383	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:37 PM	Re: your new science paper	(b)(5)	Fully Withheld	Duplicate of email at page 382.
383-384	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist provides additional explanation and cites figures in prior work regarding Arctic temperatures. Outside scientist also opines on other scientists' work and notes possible interactions and questions for future research. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.

385-386	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	10:01 AM	Re: SST adjustment question	(b)(5)	Fully Withheld	NOAA scientist contacts outside scientist to request insight and clarification regarding the outside scientist's work on data corrections in sea surface temperature data set and how such corrections may relate to the alleged hiatus in order to better understand data analysis as related to the alleged hiatus for development of the paper.
389-390	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	3:41 PM	Re: SST adjustment question	(b)(5)	Partially Redacted	NOAA scientist responds to clarification and analysis from outside scientist by characterizing preliminary finding and discussing time scales.
396	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
396-397	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 292-293.
398-399	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
399	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294-295.
399	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:36 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
399-400	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
400	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.

400	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
400	Cowtan, Kevin	Huang, Boyin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Ruedy, Reto	06/07/2015	3:08 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 296-297.
402	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	10:01 AM	Re: SST adjustment question	(b)(5)	Partially Redacted	Duplicate of pages 385-386.
403-404	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	3:41 PM	Re: SST adjustment question	(b)(5)	Partially Redacted	Duplicate of pages 389-390.
407, 412	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407, 411	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
407-408	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
408, 411	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.

408	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
408-409	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.
413, 418	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413, 417	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
413-414	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
414, 417	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.
414	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
414-415	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.

422	Karl, Thomas R.	Tepel, Mackenzie; Sessing, Janice; Vose, Russell; Vincent, Katy; Leslie, John;	5/21/2015	4:08 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
422	Tepel, Mackenzie	Karl, Thomas R.	5/21/2015	3:45 PM	Re: FYI . . . Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of 287.
422	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
422	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
422	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.

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3361-3366	Category A	(b)(5)	
3368-3375	Category A	(b)(5)	
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3602-3610	Category A	(b)(5)	
3621-3633	Category A	(b)(5)	
3638-3643	Draft graphs and charts of SST data to be used in development of the paper.	(b)(5)	
3669-3672	Category A	(b)(5)	
3672-3688	Category A	(b)(5)	
3689-3692	Draft graphs of SST and land temperature data to be used in development of the paper.	(b)(5)	
3693-3694	Duplicates of emails processed elsewhere	(b)(5)	
3695-3703	Category E	(b)(5)	
3705-3719	Category A	(b)(5)	
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3735-3744	Category A	(b)(5)	
3745-3755	Category C	(b)(5)	
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4197-4207	Category C	(b)(5)	
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4297-4301	Category A	(b)(5)	
4302-4307	Category C	(b)(5)	
4308	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4309-4314	Category D	(b)(5)	
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4322-4332	Category A	(b)(5)	
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4437-4447	Category A	(b)(5)	
4448-4453	Category A	(b)(5)	
4454-4464	Category C	(b)(5)	
4465-4475	Category A	(b)(5)	
4476-4486	Category A	(b)(5)	
4487-4496	Category A	(b)(5)	
4497-4502	Category A	(b)(5)	
4503	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4504-4509	Category C	(b)(5)	
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4520-4525	Category A	(b)(5)	
4533-4543	Category A	(b)(5)	
4544-4549	Category A	(b)(5)	

4550	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4551-4556	Category D	(b)(5)	
4557-4567	Category A	(b)(5)	
4568-4573	Category A	(b)(5)	
4574-4578	NOAA draft communications plan regarding publication of the paper.	(b)(5)	
4579-4589	Category A	(b)(5)	
4591-4599	Draft FAQs for communications plan related to release of paper.	(b)(5)	
4600-4607	Category A	(b)(5)	
4614-4619	Category C	(b)(5)	
4620-4630	Category A	(b)(5)	
4631-4636	Category A	(b)(5)	
4637-4639	Category A	(b)(5)	
4640-4650	Category C	(b)(5)	
4651-4654	Draft chart of MLOST data created by NOAA scientists to be used in development of the paper.	(b)(5)	
4655-4665	Category A	(b)(5)	
4666-4675	Category A	(b)(5)	
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4737-4750	Category A	(b)(5)	
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5331-5334	Category A	(b)(5)	
5335-45	Category A	(b)(5)	
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5360-70	Category C	(b)(5)	
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5451-5460	Category A	(b)(5)	
5461-71 PR	Category C	(b)(5)	
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5477-81	Category E	(b)(5)	
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5535-45 PR	Category C	(b)(5)	
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5666-71	Category C	(b)(5)	
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5681-5688	Category A	(b)(5)	
5689	Category B	(b)(5)	
5690-95	Category C	(b)(5)	
5696-5706	Category A	(b)(5)	
5707-5712	Category A	(b)(5)	
5713-5723	Category A	(b)(5)	
5724-5729	Category A	(b)(5)	
5730	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
5731-36	Category C	(b)(5)	
5738-41	Draft charts of annual global temperatures for use in development of the paper.	(b)(5)	
5742-5752	Category A	(b)(5)	
5753-5758	Category A	(b)(5)	
5781-5791	Category A	(b)(5)	
5792-5797	Category A	(b)(5)	
5798-5808	Draft powerpoint by author presenting information on global temperature and presenting data analysis conducted by NOAA scientists for the paper.	(b)(5)	
5809-11	Category C	(b)(5)	
5812-5822	Category A	(b)(5)	
5823-5828	Category A	(b)(5)	
5829-5837	Category A	(b)(5)	
5840-5849	Category C	(b)(5)	
5850-5858	Category C	(b)(5)	
5859-5860	Category C	(b)(5)	
5861-5865	Category C	(b)(5)	
5866-5868	Category C	(b)(5)	
5869-5879	Category A	(b)(5)	
5880-5890	Category A	(b)(5)	
5891-5901	Category A	(b)(5)	
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5919-5924	Category A	(b)(5)	
5925-45	Category C	(b)(5)	
5946-5956	Category A	(b)(5)	
5957-5962	Category A	(b)(5)	
5963-75	Category C	(b)(5)	

5976-5986	Category A	(b)(5)	
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6008-6016	Category C	(b)(5)	
6017-6027	Category A	(b)(5)	
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6034-44	Category C	(b)(5)	
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6062-67	Category D	(b)(5)	
6068-6071	Category C	(b)(5)	
6072-6074	Category C	(b)(5)	
6075-6077	Category C	(b)(5)	
6078-6088	Category A	(b)(5)	
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6111-6133	Category A	(b)(5)	
6134-45	Category C	(b)(5)	
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6339-57	Category C	(b)(5)	

6358	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
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6408-09	Category A	(b)(5)	
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6461-69	Category C	(b)(5)	
6470-6478	Category A	(b)(5)	
6479-6488	Category C	(b)(5)	
6489-6499	Draft graphs of SST data created by NOAA scientists to be used in development of the paper.	(b)(5)	
6500-6508	Category A	(b)(5)	
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6538-6545	Category A	(b)(5)	
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6603-6639	Category A	(b)(5)	
6640-6649	Category A	(b)(5)	
6650-6671	Category A	(b)(5)	
6672-8882	Category E	(b)(5)	
6683-6699	Category A	(b)(5)	
6700-6710	Category C	(b)(5)	
6711	Category B	(b)(5)	
6712-6720	Category C	(b)(5)	
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6766-6761	Category A	(b)(5)	

6772	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
6773-6779	Category C	(b)(5)	
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7413-7423	Category C	(b)(5)	
7424-7434	Category C	(b)(5)	
7435-7445	Category C	(b)(5)	
7446-7450	Draft FAQs for communications plan related to publication of paper.	(b)(5)	
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7455-7497	Category A	(b)(5)	
7498-7506	Category A	(b)(5)	
7507-7513	Category A	(b)(5)	
7514-7521	Category A	(b)(5)	
7522-7535	Category A	(b)(5)	
7536-7551	Category A	(b)(5)	
7552-7559	Category A	(b)(5)	
7560-7567	Category A	(b)(5)	
7568-7573	Category A	(b)(5)	
7574-7582	Category A	(b)(5)	
7583-7593	Category A	(b)(5)	
7594-7604	Category A	(b)(5)	

7605-7613	Category A	(b)(5)	
7614-7623	Category A	(b)(5)	
7624-7633	Category A	(b)(5)	
7634-7643	Category A	(b)(5)	
7644-7653	Category A	(b)(5)	
7654-7664	Category A	(b)(5)	
7665-7674	Category A	(b)(5)	
7675-7689	Category A	(b)(5)	
7690-7700	Category A	(b)(5)	
7701-7712	Category A	(b)(5)	
7713-7724	Category A	(b)(5)	
7725-7736	Category A	(b)(5)	
7737-7739	Category A	(b)(5)	
7740-7751	Category A	(b)(5)	
7752-7764	Category A	(b)(5)	
7765-7777	Category A	(b)(5)	
7778-7789	Category A	(b)(5)	
7790-7802	Category A	(b)(5)	
7803-7815	Category A	(b)(5)	
7816-7823	Category A	(b)(5)	
7824-7832	Category A	(b)(5)	
7833-7842	Category A	(b)(5)	
7843-7848	Category A	(b)(5)	
7849-7854	Category A	(b)(5)	
7855-7860	Category A	(b)(5)	
7861-7866	Category A	(b)(5)	
7867-7873	Category A	(b)(5)	
7874-7877	Category A	(b)(5)	

Categories	Descriptions
A	Draft of paper "Possible artifacts of data biases in the recent global surface warming hiatus" by Thomas Karl, et al. as well as the drafts of the "supplementary materials" that accompanied the paper and were made available for download by Science upon publication of the paper. Non-final, pre-decisional draft contains opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper, and/or responses to other NOAA authors' or
B	Drafts of cover letter exchanged between authors, from Tom Karl to Science magazine, in response to peer review comments.

C	Draft responses to external peer review. Draft responses exchanged among NOAA authors to determine how best to respond to comments provided by external peer reviewers. Pre-decisional discussions that reflect proposed responses to peer review comments. Drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers.
D	Responses to external peer reviews. NOAA's Responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. Responses were submitted as part of process to assist in authors' deliberations whether and in what form to publish the paper.
E	Questions for discussion and draft graphs circulated by one author and created for author discussions during development of the paper.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 2 to Declaration of Mark Graff



May 27, 2016

Mr. Bill Marshall
425 Third St., SW
Suite 800
Washington, DC 20024

Re: FOIA Request No. DOC-NOAA-2016-000351

Dear Mr. Marshall:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAOnline on December 15, 2015, for certain records of the National Oceanic and Atmospheric Administration (NOAA). Pursuant to the Joint Status Report filed on March 22, 2016 in *Judicial Watch v. U.S. Department of Commerce*, 1:15-cv-2088-CRC (D.D.C.), and the Court's March 24, 2016 Minute Order in that action, on April 15, 2016, we released in their entirety 122 pages of records that are responsive to item 4 of your FOIA request, as modified by the March 1, 2016 Joint Status Report.

Pursuant to the March 22, 2016 Status Report and the Court's March 24, 2016 Minute Order, this letter responds to items 1-3 of your request, as modified by the March 1, 2016 Joint Status Report. We are providing 242 pages, including:

- 102 pages of records that we are releasing in their entirety.
- 57 pages of records that have been partially redacted under FOIA Exemption (b)(5), 5 U.S.C. 552(b)(5), which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The redacted material is protected by the deliberative process privilege.
- 13 pages of records that contain redactions of non-responsive material.
- 17 pages of records that have been partially redacted under FOIA Exemption (b)(5) (deliberative process) and also contain redactions of non-responsive material.
- 3 pages of records that are partially redacted under FOIA Exemption (b)(5) and FOIA Exemption (b)(6), 5 U.S.C. 552(b)(6), which protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

In this release, we have also noted, on 50 separate pages, where pages of email chains have been withheld in their entirety as non-responsive or under a FOIA exemption. We are withholding in their entirety 8,013 pages of records under FOIA Exemption (b)(5) that are pre-decisional and deliberative, and protected under the deliberative process privilege. 7,877 of these pages are drafts and other documents. 136 of these pages are deliberative email communications. Because the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records.

If you have any questions, your attorney may contact Kevin Snell, Trial Attorney, at 202-305-0924. Please be sure to refer to the civil action number, 1:15-cv-2088-CRC, and the FOIA Request Number, DOC-NOAA-2016-00351, in all correspondence regarding this case.

Sincerely,

A handwritten signature in blue ink that reads "Mark S. Paese". The signature is fluid and cursive, with the first name "Mark" being the most prominent part.

Mark S. Paese
Deputy Assistant Administrator
NOAA Satellite and Information Service

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF DR. RICHARD W. SPINRAD

1. I am Dr. Richard W. Spinrad, and I have been the Chief Scientist of the National Oceanic and Atmospheric Administration (NOAA) since May 9, 2014. As Chief Scientist, I provide policy and program direction for the agency’s science and technology priorities. I have 30 years of scientific and executive experience. At different points in my career, I have worked as a research scientist, including for the Navy; held faculty appointments at three universities; directed a national non-profit organization; and presided over a private company.

2. I am aware that the pending litigation regards NOAA’s decision to withhold certain substantive communications among scientists from its response to a request under the Freedom of Information Act (FOIA), in light of the exception from disclosure under FOIA that applies to material generated in connection with a “deliberative process.” At issue are email

discussions among NOAA scientists at the National Centers for Environmental Information (NCEI) who authored a report published in June 2015 addressing climate trends, as well as communications between those NOAA scientists and scientists located outside the federal government. I am, further, aware that a separate declaration from the NOAA FOIA Officer (Mark H. Graff) will address the particular facts of the specific report and specific communications at issue in this litigation.

3. I submit this declaration to describe more generally the harm that would result to our agency and to federal scientists if the deliberative communications among NOAA's scientists, or between NOAA's scientists and outside experts providing input to the agency's processes, were to be released. Such harm would result from release of either deliberative communications among federal scientists, or of deliberative communications between federal scientists and scientists outside the federal government (whom I refer to as "outside scientists"). Such outside scientists may work, for example, in academia, international data-collecting organizations, non-governmental research organizations, state agencies, or private industry.

4. My education includes a Bachelor of Arts degree (1975) in Earth and Planetary Sciences from The Johns Hopkins University in Baltimore, Maryland, and Master of Science (1978) and Doctoral degrees (1982) in oceanography from Oregon State University.

5. Prior to joining NOAA, I served as a Program Manager and Division Director with the United States Navy Office of Naval Research (1987 - 1994); the Executive Director for the Consortium for Oceanographic Research and Education, a non-profit research advocacy organization (1994 - 1999); and Technical Director (senior civilian) at the United States Navy Office of the Oceanographer of the Navy (1999 - 2003). In connection with my service, I was

awarded the U.S. Navy Distinguished Civilian Service Award, which is the highest civilian award given by the Navy.

6. From 2003 to 2010, I served as Assistant Administrator at NOAA in two sequential capacities, as head of the National Ocean Service and as head of NOAA's Office of Oceanic and Atmospheric Research.

7. I then served as Vice President for Research at Oregon State University in Corvallis, Oregon (2010 - 2014) before being appointed as NOAA's Chief Scientist.

8. Among my other duties during my career at NOAA, I have served as co-lead of the White House committee that developed the first national set of ocean research priorities and as the representative from the Department of Commerce to the White House Office of Science and Technology Policy (OSTP) committee addressing scientific integrity, culminating in guidance from OSTP in December 2010.

9. As NOAA's Assistant Administrator for Oceanic and Atmospheric Research (2005 - 2010), I directed the agency's programs in oceanography, atmospheric science, and climate science. I directly supervised significant research efforts including those relating to ocean exploration, the National Sea Grant College Program, and the Climate Program Office. I also supervised seven NOAA laboratories around the United States.

10. As NOAA's Assistant Administrator for Ocean Services and Coastal Zone Management (2003 - 2005), I directed the agency's navigation and coastal services, including the National Geodetic Survey, the Office of National Marine Sanctuaries, and the Office of Coastal Resource Management. As part of my duties, I represented the interests of the United States in

the establishment of a global tsunami warning system. I also served as the United States permanent representative to the United Nations' Intergovernmental Oceanographic Commission.

11. I have received several high honors during my tenure at NOAA, including Presidential Rank Awards from Presidents George W. Bush and Barack H. Obama.

12. During my career, I have belonged to several professional societies designed to advance research and education and to promote communication among the scientific community. Such organizations bring together scientists from different settings, including government, academia, and industry, recognizing their shared goals. I am a fellow of the American Meteorological Society, the Marine Technology Society, and the Institute of Marine Engineering, Science and Technology. I am the past president of the Oceanography Society and president-elect of the Marine Technology Society.

13. Because I have worked as a scientist in multiple settings, including NOAA, the Navy and in academia, I have a broad perspective on the key importance of collaboration to the scientific community. My experiences have included a broad array of types and intensities of collaboration. I have worked alongside researchers in the field and at sea, and have co-authored dozens of peer-reviewed publications with collaborators from all of the sectors identified above.

14. The heart of the scientific method is the formulation, refining, and testing of hypotheses using available facts, which must be gathered through research and then analyzed. Scientists pursuing a research objective may begin with only rough ideas or ideas that are not yet fully formed. Those ideas are then developed, tested, and revised as data are collected and interpreted. The possible interpretations are generated and tested in part through exchanges and

candid debates with peers inside and outside the federal government. The set of available information, and our understanding of it, evolves through this process.

15. Focusing on the work we do at NOAA, I would point to the exchange and debate among peers as the mechanism that allows us to ensure that the scientific products we develop and release to the public are robustly developed and accurately tested. Such rigorous vetting is critical to developing and releasing scientific information of the highest possible quality to inform the public and decision-makers.

16. When we are developing and refining hypotheses, then, we value input and feedback from the community of scientists who have expertise in the field relating to a particular project. The relevant expertise will likely not be located in just one organization, but most often will be shared among several different scientists, each of whom may have a specialized focus.

17. In seeking out expert feedback and input, scientists generally do not distinguish between colleagues who work within federal agencies and scientists who work in other settings. Rather, our scientific peers who have expertise to offer are generally considered as belonging to one scientific community that shares the overall goal of advancing scientific understanding in their fields. Sometimes experts located outside the federal government have a specialized area of expertise that the agency lacks, or they may be respected peers who can offer a second opinion.

18. Indeed, in some scientific fields (including climate science) there are only a limited number of scientists with the relevant, specialized expertise. Many of them are federal employees, and having a strong scientific team in-house enables our agencies to produce very high quality scientific products. Integrating the perspectives and information from outside scientists allows us to produce even more robust scientific products.

19. It is therefore commonplace, as a research project proceeds, for federal scientists to reach out to request feedback and input from colleagues both inside and outside the federal government who have relevant knowledge and expertise. As I noted above (§ 3), these colleagues may be located in such settings as academia, international data-collecting organizations, non-governmental organizations, or private industry, and may have a common history of collaborating with federal scientists on working groups and panels. These requests for input often lead to candid discussions and debates that can be thought of as a type of informal peer review that fulfills a valuable role in developing scientific thought and promoting scientific understanding. In an earlier era, such discussions were limited to conversations among scientists at irregular intervals, such as at professional society gatherings. The advent of electronic communications has facilitated more frequent and regular discussions, to the great advancement of science.

20. There is a general and well-established presumption, often implied rather than explicit, that such discussions are not intended to be, and will not be, shared with a wider audience. Confidentiality is essential to ensuring the participants are free to propose new ideas or explanations without fear of misinterpretation or being taken out of context, and without slowing down the exchange of ideas. Sometimes the communications are very informal and are developed quickly, which is helpful particularly at the initial stages of project development when it is important to generate new ideas.

21. By allowing for the testing and refinement of ideas, such confidential discussions help ensure that scientific products are more well-developed and robust. If such discussions

could not take place, the exchange of scientific understanding would be hampered and the pace of scientific progress would slow.

22. I believe several types of harm would likely result to the agency, to federal scientists, and ultimately to the public if federal scientists could not engage in the type of confidential, candid discussions with each other or with outside experts that I have described. Federal scientists should be permitted the same opportunities for collegial collaboration that is the standard for scientists in other settings. This collaboration is particularly productive as new facts become available and we seek consensus in the scientific community on the appropriate interpretation and understanding of these facts.

23. First, there is the risk of chilling candid, informal exchanges and debates among scientists in the community of experts, leading to a less robust scientific process overall. This would adversely affect the agency's ability to produce high quality scientific products. Federal scientists obviously must communicate with one another in developing their agencies' products, and should have confidence that their preliminary views and suggestions will be treated as confidential. They should also feel free to reach out and express their ideas to qualified outside scientists for their feedback. If there is uncertainty as to whether their communications will be kept from public view, federal scientists would likely be less candid about expressing their views and seeking important feedback. They may be concerned, for example, about potential damage to their reputation from a statement being misconstrued or taken out of context or about the risk of harassment. In certain contexts, such as climate research and analysis, the potential for a chilling effect is particularly high because developments in this area typically generate a high

level of interest or controversy. The quality of our scientific products would greatly suffer if our scientists were unable to freely suggest, explore and test their ideas due to such considerations.

24. Similarly, outside scientists should have confidence that input they provide to their peers at federal agencies will be treated as confidential. If an outside scientist believed that their communications with federal scientists may become public, he or she may change the way they engage with federal colleagues in a way that slows the exchange of ideas, or they may choose not to engage in this type of valuable, informal peer review at all. This would narrow the range of perspectives taken into account in generating our scientific products and therefore reduce the overall robustness of the scientific process.

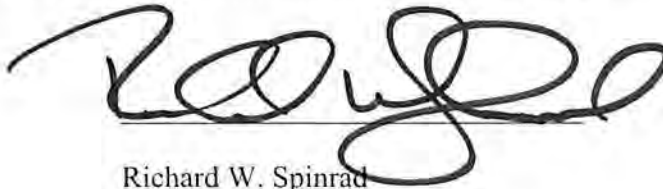
25. Second, there is a risk that the public may become confused by preliminary or incomplete information contained in the communications among scientists, or by information that is misinterpreted or taken out of context. Here also, the climate science context is one in which the risks of misinterpretation or confusion are somewhat elevated, in light of the degree of interest by various groups and the complex nature of the interpretations at issue. For example, because the community of experts is already familiar with the context of their communications and the current state of the science, they tend to use shorthand and informal language in sharing ideas that are actually highly technical and complex. I note, for example, that the use of the term "theory" has a very specific definition in scientific circles, but is interpreted in a vastly different manner by the lay public. While use of informal or short-hand language is useful and appropriate to expedite discussions among peers, more formal explanations and, in many cases, caveats, would be necessary for products that are intended to be shared with a public audience.

26. Third, there is the risk that federal agencies would be unable to attract and retain the best scientists if these scientists were unable to communicate in confidence with peers inside their agencies or with experts in the community outside the federal government. This was demonstrated dramatically as we improved the OSTP guidance on scientific integrity over the last several years; I have had many discussions with academic scientists who indicated that the scientific freedom reflected in the government's policies on scientific integrity have encouraged them to consider applying for and accepting positions in government laboratories. If instead federal scientists believed they must wall themselves off from confidential discussions with each other or with outside scientists, depriving their projects of valuable, informal input and expertise, they may conclude they can perform their work better in another setting.

27. In conclusion, upholding the expectations of confidentiality of scientists – whether employed in the federal government or outside of it – who have participated in candid exchanges and debates in the development of the agency's scientific products is critical to fostering a vigorous scientific process. This, in turn, is critical to ensuring the public receives the highest quality information from federal agencies.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 15 day of December, 2016, Washington, D.C.



Richard W. Spinrad

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

[PROPOSED] ORDER

Upon consideration of the U.S. Department of Commerce’s (“the Department’s”) motion for summary judgment, and any response and reply thereto, and the entire record here, and for good cause shown, it is hereby

ORDERED that, for the reasons set forth in the Department’s motion:

- 1. The Department’s motion is hereby **GRANTED**; and
- 2. Summary judgment is hereby **ENTERED** for the Department.

Dated: _____

CHRISTOPHER R. COOPER
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendant U.S. Department of Commerce hereby moves for summary judgment on all of Plaintiff's claims. This motion is supported by a statement of material facts as to which there is no genuine issue, a memorandum of points and authorities, the Declarations of Mark Graff and Dr. Richard Spinrad, and a *Vaughn* index. A proposed order is attached.

Dated: December 15, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

/s/ Kevin M. Snell
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
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INTRODUCTION

In this Freedom of Information Act (“FOIA”), Plaintiff Judicial Watch requested from the National Oceanographic and Atmospheric Administration (“NOAA”), a component of the Department of Commerce, records relating to different temperature metrics and datasets.¹ The parties conferred and reached an agreement regarding the scope of the request and relevant search parameters. Using those agreed-upon parameters, NOAA conducted a search and ultimately produced responsive, non-exempt material.

Plaintiff now challenges the adequacy of NOAA’s search and all of its redactions and withholdings. But as discussed more fully herein, NOAA conducted a search that was reasonably calculated to locate all non-duplicative records in its possession responsive to Plaintiff’s request. Moreover, all of the challenged information and records that NOAA withheld were properly exempt from production. The Court should therefore grant summary judgment in favor of the Department of Commerce.

FACTUAL BACKGROUND

I. The Hiatus Paper

The FOIA request at issue centers around a June 4, 2015 study authored by NOAA scientists and published in the journal *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change (“IPCC”) released a report in stages that concluded that the upward global surface temperature trend from 1998-2012

¹ The FOIA request also sought communications between NOAA and the House of Representatives Committee on Science, Space, and Technology. The agency made a separate production of these records, which Plaintiff’s counsel indicated in writing that Plaintiff did not intend to challenge. Therefore, this motion for summary judgment and accompanying documents do not address the agency’s response to that aspect of the request.

was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) Decl. ¶ 9 (attached herein as Exhibit A). The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” *Id.* The Hiatus Paper, drafted after that report by a team of NOAA scientists, sought to properly account for the alleged “hiatus.”

NOAA’s National Centers for Environmental Information (“NCEI”) produces and maintains datasets for global ocean areas and global land areas. *Id.* ¶ 6. Scientists throughout the government, including scientists at agencies other than NOAA, and outside of the government, use the sea surface temperature and land surface temperature datasets for a variety of purposes, including for climatic research and climate assessments. *Id.* NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. *Id.* There were two significant developments related to the “hiatus” after the IPCC’s report. In particular, 2013 and 2014 were two of the five warmest years on record for the globe. *Id.* ¶ 10. Also, NOAA scientists made significant improvements to its sea surface temperature dataset, one of largest being a correction that accounted for the difference in data collected from ships and buoys. *Id.* Buoys have been increasingly used since the 1970s to measure sea surface temperatures, and scientists developed a method to correct for the difference between these two observing systems and incorporated those corrections into the dataset. *Id.*

NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. *Id.* ¶ 7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. *Id.* ¶ 8.

Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to

NOAA's sea surface temperature dataset. *Id.* ¶ 11. Karl sought feedback on the draft paper, and a team of scientists at NOAA worked to develop a manuscript. *See id.* ¶¶ 11-13. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on the implications of other researchers' work, and so on. *Id.* ¶ 13. Such collaboration via discussions and drafts is standard practice at NCEI. *Id.* ¶ 13.

In December 2014, the authors submitted the draft paper to the journal *Science*. *Id.* ¶ 14. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. *Id.* ¶ 20. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See id.* ¶ 21. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. *Id.* ¶ 23.

II. The FOIA Request and NOAA's Response

Plaintiff's FOIA request, dated October 30, 2015, sought in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the

utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

Graff Decl. ¶ 24; *see also* Answer, ECF No. 8-1.

Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. *Id.* During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. *Id.* ¶ 26. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. *Id.*

The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” *Id.*; Graff Decl. ¶ 27.

After NOAA directed those custodians to run the agreed-upon searches, it made a production on May 27, 2016 of 102 pages of material in its entirety and 90 partially redacted pages. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records, and informed Plaintiff that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12. The parties then

discussed the details of potential challenges to NOAA's production, and NOAA agreed to provide Plaintiff a draft *Vaughn* index in an attempt to narrow the issues in dispute. *See* Fifth & Sixth Joint Status Report, ECF Nos. 13 & 14. Upon further review of the withheld information, on September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's cell phone number), Graff Decl. ¶ 30, and contemporaneous with this filing on December 15, 2016, NOAA released an additional 62 records, Graff Decl. ¶ 31.

STANDARD OF REVIEW

A court reviews an agency's response to a FOIA request *de novo*. 5 U.S.C. § 552(a)(4)(B). "FOIA cases are typically and appropriately decided on motions for summary judgment." *Moore v. Bush*, 601 F. Supp. 2d 6, 12 (D.D.C. 2009). In deciding at the summary judgment stage whether an agency has fully discharged its obligations under FOIA, "the agency must show, viewing the facts in the light most favorable to the requester, that there is no genuine issue of material fact." *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994).

ARGUMENT

I. NOAA's Search Was Reasonable, Adequate, and Satisfies Its Obligation Under the FOIA

A. The Standard for an Adequate Search

The touchstone for determining whether an agency should prevail on a motion for summary judgment in FOIA litigation is whether the agency demonstrates that its "search for documents was adequate." *Larson v. Dep't of State*, 565 F.3d 857, 869 (D.C. Cir. 2009). An agency's search is adequate if "it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The adequacy of a FOIA

search is thus gauged “not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (quoting *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)). In short, “[t]he adequacy of the search . . . is judged by a standard of reasonableness.” *Steinberg*, 23 F.3d at 551; *see also DiBacco v. U.S. Army*, 795 F.3d 178, 194 95 (D.C. Cir. 2015) (“A search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.” (quoting *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986))).

“In demonstrating the adequacy of the search, the agency may rely upon reasonably detailed, nonconclusory affidavits submitted in good faith.” *Id.* (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). Such affidavits are sufficient if they “set[] forth the search terms and the type of search performed, and aver[] that all files likely to contain responsive materials (if such records exist) were searched.” *Chambers v. U.S. Dep’t of Interior*, 568 F.3d 998, 1003 (D.C. Cir. 2009) (quoting *McCready v. Nicholson*, 465 F.3d 1, 7 (D.C. Cir. 2006)). This standard does not require that “the affidavits of the responding agency set forth with meticulous documentation the details of an epic search for the requested records.” *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982). “Rather, in the absence of countervailing evidence or apparent inconsistency of proof, affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice” *Id.* Moreover, “[s]uch agency affidavits attesting to a reasonable search ‘are afforded a presumption of good faith,’ and ‘can be rebutted only with evidence that the agency’s search was not made in good faith.’” *Riccardi v. US Dep’t of Justice*, 32 F. Supp. 3d 59, 63 (D.D.C. 2014) (quoting *Def. of Wildlife v. U.S. Dep’t of Interior*, 314 F. Supp.2d 1, 8 (D.D.C. 2004)).

Finally, courts in this circuit recognize the “well-worn rule . . . that the adequacy of a FOIA search is not to be judged by its results.” *Rosenberg v. United States Dep’t of Immigration & Customs Enf’t*, 13 F. Supp. 3d 92, 104 (D.D.C. 2014). “The question is not ‘whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was *adequate*.’” *Steinberg*, 23 F.3d at 551 (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)) (emphases in original). Thus, courts have rejected challenges to the adequacy of a search, even when a “slim yield may be intuitively unlikely” and a “reasonable observer would find th[e] result[s] unexpected.” *Ancient Coin Collectors Guild*, 641 F.3d at 514. Moreover, “mere speculation that as yet uncovered documents might exist[] does not undermine the determination that the agency conducted an adequate search for the requested records.” *Wilbur v. CIA*, 355 F.3d 675, 678 (D.C. Cir. 2004); *see also Sheffield v. Holder*, 951 F. Supp. 2d 98, 101 (D.D.C. 2013) (noting that a requester “cannot rest . . . on mere conjecture or ‘purely speculative claims about the existence and discoverability of other documents’” (quoting *Elec. Privacy Info. Ctr. v. Dep’t of Homeland Sec.*, 384 F. Supp. 2d 100, 107 (D.D.C. 2005))).

B. NOAA Conducted an Adequate Search

As set forth in Mark Graff’s Declaration, NOAA’s search for records responsive to Plaintiff’s FOIA request was more than adequate. *See Perry*, 684 F.2d at 127. Judicial Watch and NOAA reached an agreement as to how the search would be carried out. The agency would search the records of the nine Hiatus Paper authors for any record referring to that study and containing the term “NMAT,” “night marine air temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “advanced very high resolution radiometer,” “AVHRR,” “advanced microwave scanning radiometer,” and “AMSR.” Graff Decl. ¶ 27; Second Joint Status Report at 2, ECF No.

10. The timeframe for the search would be October 1, 2014 to June 4, 2015. *Id.* NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. *Id.* ¶ 33. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. *Id.* ¶ 35. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. *Id.* ¶¶ 36-38.² There were no common areas at NCEI for NOAA to search. *Id.* ¶ 37. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. *Id.* ¶ 44.

On this record, NOAA's search should be upheld under FOIA. NOAA has provided "a reasonably detailed [declaration], setting forth the search terms and the type of search performed," and averred that all files likely to contain responsive, non-duplicative materials were searched. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (quoting *Oglesby*, 920 F.2d at 68). NOAA has "made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby*, 920 F.2d at 68.

II. NOAA Properly Withheld Information Under Exemption 5

FOIA does not require disclosure of "matters that are . . . inter-agency or intra-agency memorandums or letters [which] would not be available by law to a party other than an agency in

² One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. *See* Graff Decl. ¶ 36 n.1. No additional records responsive to this request from that author are known to have existed following his retirement. *See id.*

litigation with the agency.” 5 U.S.C. § 552(b)(5). “Exemption 5 . . . exempt[s] those documents, and only those documents, normally privileged in the civil discovery context.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 thus protects the attorney-client privilege, the attorney work product privilege, and the deliberative process privilege. *Id.*; see also *Rockwell Int’l Corp. v. Dep’t of Justice*, 235 F.3d 598, 601 (D.C. Cir. 2001).

The deliberative process privilege “allows the government to withhold documents and other materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). According to the D.C. Circuit,

There are essentially three policy bases for this privilege. First, it protects creative debate and candid consideration of alternatives within an agency, and, thereby, improves the quality of agency policy decisions. Second, it protects the public from the confusion that would result from premature exposure to discussions occurring before the policies affecting it had actually been settled upon. And third, it protects the integrity of the decision-making process itself by confirming that officials should be judged by what they decided, not for matters they considered before making up their minds.

Russell v. Dep’t of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982) (quoting *Jordan v. Dep’t of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978)).

The privilege is necessary because “those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the detriment of the decisionmaking process.” *Sears*, 421 U.S. at 150-51. “[E]fficiency of Government would be greatly hampered if, with respect to legal and policy matters, all Government agencies were prematurely forced to ‘operate in a fishbowl.’” *EPA v. Mink*, 410 U.S. 73, 87 (1973), *abrogated on other grounds*, Pub. L. No. 93-502, 88 Stat. 1561 (1974). There are “[t]wo requirements [that] are essential to the deliberative process privilege: the material must be predecisional and it must be deliberative.” *In re Sealed Case*, 121 F.3d at 737.

The agency is best situated “to know what confidentiality is needed ‘to prevent injury to the quality of agency decisions.’” *Chem. Mfrs. Ass’n v. Consumer Prod. Safety Comm’n*, 600 F. Supp. 114, 118 (D.D.C. 1984) (quoting *Sears*, 421 U.S. at 151). NOAA’s justification for asserting Exemption 5 is “sufficient if it appears ‘logical’ or ‘plausible.’” *Wolf v. CIA*, 473 F.3d 370, 374-75 (D.C. Cir. 2007).

Here, NOAA properly withheld information under Exemption 5 that is protected by the deliberative process privilege because the information withheld reflects deliberations in preparation for decisions of how to analyze and present data and theory, as well as decisions about how to respond to peer review comments and deliberations on developing public communications and congressional presentations. *See* Graff Decl. ¶¶ 50-63. Disclosure of such information, which is predecisional and deliberative, and contains selected factual material intertwined with opinion, would inhibit candid internal discussions and the expression of recommendations and judgments. *Id.* ¶ 64. Disclosure of the details of these confidential discussions and drafts could reasonably be expected to chill the open and frank exchange of comments and opinions that NOAA officials engage in, as well as inhibit candid internal discussions and recommendations regarding preferred courses of action for agency personnel. *Id.*

The documents withheld in full or in part under the deliberative process privilege fall generally into three categories: (1) drafts of the Hiatus Paper; (2) internal deliberations, including email exchanges; and (3) peer review materials, both formal and informal. As explained below and in the attached *Vaughn*, each redacted or withheld document contains both predecisional and deliberative information. Accordingly, NOAA properly asserted Exemption 5 based on the deliberative process privilege.

1. Drafts of the Hiatus Paper

NOAA withheld pursuant to Exemption 5 inter- or intra-agency, predecisional, and deliberative draft versions of the Hiatus Paper (including drafts of its accompanying figures and “supplementary materials”) that were produced while NOAA scientists were developing the Paper. Graff Decl. ¶ 51.³ “[D]raft documents by their very nature, are typically predecisional and deliberative, because they reflect only the tentative view of their authors; views that might be altered or rejected upon further deliberation either by their authors or by superiors.” *In re Apollo Grp., Inc. Sec. Litig.*, 251 F.R.D. 12, 31 (D.D.C. 2008) (non-FOIA case) (citation omitted). Accordingly, “drafts are commonly found exempt under the deliberative process exemption.” *People for the Am. Way Found. v. Nat’l Park Serv.*, 503 F. Supp. 2d 284, 303 (D.D.C. 2007). Among other reasons for this, disclosure of “decisions to insert or delete material or to change a draft’s focus or emphasis . . . would stifle the creative thinking and candid exchange of ideas necessary to produce good historical work.” *Dudman Commc’ns Corp. v. Dep’t of Air Force*, 815 F.2d 1565, 1569 (D.C. Cir. 1987). Indeed, drafts are ordinarily exempt regardless of whether or to what extent segments of the draft made their way into the final product: “If the segment appeared in the final version, it is already on the public record and need not be disclosed. If the segment did not appear in the final version, its omission reveals an agency deliberative process: for some reason, the agency decided not to rely on that fact or argument after having been invited to do so.” *Exxon Corp. v. Dep’t of Energy*, 585 F. Supp. 690, 698 (D.D.C. 1983) (quoting *Lead Industries Ass’n v. OSHA.*, 610 F.2d 70, 86 (2d Cir. 1979)); see *ViroPharma Inc. v. HHS*, 839 F. Supp. 2d 184, 193 (D.D.C. 2012) (“The choice of what factual

³ The fact that some draft versions were shared for peer review purposes outside of the federal government does not affect those drafts’ status as inter- or intra-agency. See *infra* at Section II.3.

material . . . to include or remove during the drafting process is itself often part of the deliberative process, and thus is properly exempt under Exemption 5.”); *cf. Marzen v. HHS*, 825 F.2d 1148, 1155 (7th Cir. 1987) (noting that privilege “protects not only the opinions, comments and recommendations in the draft, but also the process itself”).

These drafts are predecisional inasmuch as they were generated to assist the agency in preparing the final version of the Hiatus Paper. *See Quarles v. Dep’t of the Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990) (explaining that materials are predecisional when “prepared in order to assist an agency decisionmaker in arriving at . . . decisions”). And they are deliberative in that they reflect the development of the final paper; these non-final, predecisional drafts contain opinions and recommendations of the NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or peer reviewers’ comments on earlier drafts of the paper. *See* Graff Decl. ¶ 51; *Vaughn* part 2 Category A. Withholding this material under Exemption 5 was proper, and the release of such drafts would inhibit agency scientists from expressing their views and deter NOAA scientists from participating candidly in the development of scientific products in the future. *See* Graff Decl. ¶ 51.⁴

2. Communications Among NOAA Personnel

Also integral to the drafting of the Hiatus Paper, the authors frequently communicated and exchanged ideas with one another via email during the Paper’s development. Here, NOAA

⁴ Equally appropriate, NOAA’s *Vaughn* also shows that the agency withheld draft documents that aided in or related to the development of the Paper, such as “[d]raft graphs of land and ocean temperature data created by NOAA scientists to be used in the paper,” *Vaughn* part 2 at bates pages 1170-73, “[d]raft graphs and charts of SST data to be used in [the] development of the paper,” *Vaughn* part 2 at bates pages 2071-76, and a “[d]raft powerpoint by [an] author presenting information on global temperature and presenting data analysis done by NOAA scientists for the paper,” *Vaughn* part 2 at bates pages 1876-86.

withheld inter- or intra-agency, predecisional, and deliberative communications. *See* Graff Decl. ¶ 50. In pursuing a research objective, scientists may begin with only a rough idea, and then develop, test, and revise that idea as data is collected and interpreted. Declaration of Richard W. Spinrad (“Spinrad Decl.”) ¶ 14 (attached herein as Exhibit B). Possible interpretations are generated and tested in part through candid debates and exchanges among peers. *Id.* ¶ 15. Indeed, the exchange and debate among peers is the mechanism that allows NOAA to ensure its scientific products are robustly developed and accurately tested. *Id.* ¶ 16. And there is a general and well-established presumption that such discussions are not intended to be, and will not be, shared with a wider audience, as confidentiality is essential to ensuring participants feel free to propose new ideas or explanations without fear of misinterpretation or being taken out of context. *Id.* ¶ 20. It is critical that this type of information be protected so as not to chill candid exchanges and debates, as well as to avoid the risk of confusing the public with preliminary or incomplete information. *See id.* ¶¶ 23-25.

NOAA’s *Vaughn* index reinforces that these types of predecisional and deliberative communications occurred here, were integral to the development of the Hiatus Paper, and were appropriately withheld or redacted. *See Abteu v. U.S. Dep’t of Homeland Sec.*, 808 F.3d 895, 898 (D.C. Cir. 2015) (“[O]fficials should be judged by what they decided, not for matters they considered before making up their minds” (citation and internal quotation mark omitted)). For example, NOAA is redacting or withholding communications between scientists in which authors asked for clarification on data analysis conducted for developing the Paper, *Vaughn* part 1 at bates pages 22-23, shared opinions on the results of a draft data analysis for developing the Paper, *Vaughn* part 1 at bates page 15, offered opinions as to the best approach to take in the Paper, *Vaughn* part 1 at bates pages 300, 335, 362-63, and provided opinions on statistical error

uncertainty ranges for development of the Paper, *Vaughn* part 1 at bates page 245. Moreover, NOAA withheld a document that presented questions and draft graphs to spur discussion among the NOAA scientists. This document was created and circulated for the purpose of author discussions during the development of the Hiatus Paper, and shows NOAA scientists considering what constitutes the best data analysis and presentation for the Paper. *See Vaughn* part 2 Category E; Graff Decl. ¶ 52.⁵

In addition to withholding communications concerning the development of the Hiatus Paper, NOAA also withheld communications and information reflecting the development of a plan by its officials for communications and press release in preparation for publication of the paper, *e.g. Vaughn* part 1 at bates page 289-90, *Vaughn* part 2 at bates page 7446-50, as well as the agency's development of a presentation to Congress, *e.g., Vaughn* part 1 at bates pages 143, 324 (explaining that redacted email reflected "NOAA scientist discussing climate change research and developing the agency's presentation for Congress"). This withheld information, which reflects NOAA's development of how to brief Congress and the public, is predecisional and deliberative and falls squarely within Exemption 5. *E.g., Judicial Watch, Inc. v. U.S. Dep't of the Treasury*, 796 F. Supp. 2d 13, 31 (D.D.C. 2011) (noting email discussing response to press inquiry protected under deliberative process privilege).

All of this material is precisely the sort of information that the deliberative process privilege is designed to protect. *See Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854,

⁵ Similarly, NOAA withheld information reflecting discussions among scientists concerning potential scientific inquiries. *See, e.g., Vaughn* part 1 at bates page 75 (discussing future climate research and asking for opinion on this research and on possible role of NOAA scientists in this research). Again, such material is predecisional and deliberative, and therefore is exempt from disclosure. *E.g., Sears*, 421 U.S. at 151 n.18 (explaining that protection extends to records that are part of decisionmaking process even where process does not produce actual decision by agency).

866 (D.C. Cir. 1980) (document is “predecisional” if it is “generated before the adoption of an agency policy” and “deliberative” if it “reflects the give-and-take of the consultative process”); *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 9 (2001) (explaining that deliberative process privilege’s “object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government”) (citation omitted); *Russell*, 682 F.2d at 1048 (“[T]he exemption protects not only communications which are themselves deliberative in nature, but all communications which, if revealed, would expose to public view the deliberative process of an agency.”). Moreover, any factual material in the withheld documents reflect the authors’ selection and presentation of factual material, Graff Decl. ¶ 65, and as such it too is covered by the deliberative process privilege. *See, e.g., Ancient Coin Collectors Guild*, 641 F.3d at 513 (explaining that factual material can be withheld where it reflects “an exercise of discretion and judgment calls” and that the “legitimacy of [the] withholding” turns on “whether the selection or organization of facts is part of an agency’s deliberative process”).

Because all of the redacted and withheld information is inter- or intra-agency, predecisional, and deliberative in nature, NOAA properly applied Exemption 5.

3. Peer Review Material

NOAA also withheld inter- or intra-agency material reflecting the different peer review processes its analyses and drafts underwent prior to publication of the Hiatus Paper. *Science* follows a formal peer review process in which subject matter experts evaluate the rigor and merit of the paper, and provide feedback on an array of issues. Graff Decl. ¶ 15. Those anonymous, impartial reviewers share their reviews with the authors, *Science*’s board, and potentially other reviewers (for cross-comment). *Id.* ¶ 17.

Here, *Science* sent the manuscript to five anonymous peer reviewers, and the scientists received two rounds of comments. Upon receiving these reviewers' comments, the NOAA scientists deliberated internally as to how to respond in writing to every comment received. NOAA properly withheld peer reviewer comments, the agency's internal draft responses to these peer reviewer comments, draft cover letters NOAA's scientists wrote to accompany their response, as well as the agency's final responses to peer reviewer comments. See Graff Decl. ¶¶ 53-54; *Vaughn* part 2 Category B, C, D.

The D.C. Circuit has specifically held that comments provided by peer reviewers during the peer review process for publication of scientific articles in scientific journals are covered by Exemption 5 because they are both "pre-decisional because it preceded the agency's decision whether and in what form to publish" the paper and were part of the agency's deliberative process "because the agency secured review commentary in order to make that decision." See *Formaldehyde Inst. v. U.S. Dep't of Health and Human Servs.*, 889 F.2d 1118, 1123-25 (D.C. Cir. 1989). As that Court recognized, agency scientists "must regularly rely on the comments of expert scientists to help them evaluate the readiness of agency work for publication [and i]n that sense they must rely on the opinions and recommendations of temporary consultants." *Id.* at 1125.

The scientists' draft responses to the peer reviewer comments are also covered by Exemption 5 since these materials, including personal opinions and recommendations, draft language, data, and data interpretation for consideration, as well as comments on previous drafts of the responses, reflect predecisional and deliberative discussions. See *Vaughn* part 2 Category C; Graff Decl. ¶ 54. Similarly, the final responses to peer review comments that NOAA submitted to *Science* during the peer review process reflect the agency's response to constructive

criticism and advice, and were part of the process to assist in the authors' deliberation as to whether and in what form to publish the paper. *See Vaughn* part 2 Category D; Graff Decl. ¶ 55. These final responses, then, fit comfortably within Exemption 5. *See Petroleum Info. Corp.*, 976 F.2d at 1434 (agency documents that were "prepared in order to assist an agency decisionmaker in arriving at his decision" are "predecisional" (citation omitted)); *Coastal States Gas Corp.*, 617 F.2d at 866. Finally, the draft cover letters to *Science* accompanying the scientists' responses to the peer review comments contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' final approach had not been finalized at that point. *Vaughn* part 2 Category B; Graff Decl. ¶ 53. Withholding such draft material was appropriate.

The fact that the peer review comments were sent by *Science*, and the responses to those peer reviewer comments were sent back to *Science*, does not affect their status as "intra-agency" materials that may be protected by Exemption 5. "Recognizing that the purpose of the exemption was to promote the quality of agency policy decisions and that often these policy decisions were best made by incorporating the advice of outside experts, [the D.C. Circuit] developed a 'consultant corollary' whereby communications with temporary consultants would be considered 'intra-agency' for the purposes of Exemption 5." *Judicial Watch v. U.S. Dep't of Transp.*, 950 F. Supp. 2d 213, 216 (D.D.C. 2013) (citing cases). "When communications between an agency and a non-agency aid the agency's decision-making process and the non-agency did not have an outside interest in obtaining a benefit that is at the expense of competitors, the communication must be considered an intra-agency communication for the purposes of FOIA Exemption 5." *Judicial Watch*, 950 F. Supp. 2d at 218-19 (citing *Nat'l Inst. of Military Justice v. U.S. Dep't of Defense*, 512 F.3d 677 680-85 (D.C. Cir. 2008) ("*NIMJ*"); *Lardner v. U.S. Dep't of Justice*, No. 03-0180, 2005 WL 758267, at *1 (D.D.C. Mar. 31, 2015);

see also, e.g., Hooker v. HHS, 887 F. Supp. 2d 40, 55 (D.D.C. 2012) (upholding agency’s withholding of predecisional and deliberative letter from former employee where he “played the same role in the agency’s process of deliberation after his departure that he would have played had he remained”), *aff’d*, No. 13-5280, 2014 WL 3014213 (D.C. Cir. May 13, 2014); *see also Elec. Privacy Info. Ctr. v. DHS*, 892 F. Supp. 2d 28, 46 (D.D.C. 2012) (“In order to be excluded from the exemption, the contractors must assume a position that is ‘necessarily adverse’ to the government.”).⁶

Moreover, maintaining the confidentiality of these communications is important, as disclosure would discourage the sharing of candid thoughts of the reviewers and scientists. Graff Decl. ¶ 55, 64; *see also* Spinrad Decl. ¶¶ 20-21 (explaining importance of confidentiality in developing scientific products). Here, as in *Formaldehyde*, it is “indisputable” that both “reviewers’ comments are expected to be confidential” and “disclosure of reviewers’ comments would seriously harm the deliberative process.” 889 F.2d at 1124 (internal citations and quotations omitted).

Outside of *Science*’s formal peer review process, NOAA scientists welcomed the informal peer review from a limited number of consultants in evaluating the underlying datasets

⁶ *Department of the Interior v. Klamath Water Users Protective Association*, 532 U.S. 1 (2001), holding that Exemption 5 did not protect documents submitted by American Indian Tribes to the Interior Department addressing tribal interests that were then the subject of state and federal water allocation proceedings, does not prevent the application of the consultant corollary here. Rather, the D.C. Circuit “has allowed any communication that aids the agency’s deliberative process to be protected as ‘intra-agency,’” and “*Klamath* only modifies this by requiring that we not protect communications with interested parties seeking a government benefit that is adverse to others seeking that benefit.” *Judicial Watch*, 950 F. Supp. 2d at 218 (footnote omitted).

Also, to fall within the consultant corollary, there is no requirement that an individual must possess a contractual relationship with the agency in question. *See, e.g., NIMJ*, 512 F.3d at 679-87 (deliberative process privilege exempted from disclosure comments received by Department of Defense, in the course of issuing regulations, from non-governmental lawyers who were former high ranking governmental officials or academics or both).

and developing the Hiatus Paper. Graff Decl. ¶ 56; *see also Formaldehyde Inst.*, 889 F.2d at 1125. In the field of climate science, only a small number of scientists have the relevant, specialized expertise, *see* Spinrad ¶ 17, and it is common for scientists to seek input from colleagues both inside and outside the federal government, *id.* ¶ 19. Sometimes experts that are located outside of the federal government have an expertise that can aid the agency. *See id.* ¶ 17. The consultants here, each of whom is highly regarded in his specialized field, Graff Decl. ¶ 58, share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science, *see id.* ¶ 56; *see also Formaldehyde*, 889 F.2d at 1122, quoting *Ryan v. Dep't of Defense*, 617 F.2d 781, 789-90 (D.C. Cir. 1980) (“In the course of its day-to-day activities, an agency often needs to rely on the opinions and recommendations of temporary consultants, as well as its own employees. Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit frank discussion of policy matters and likely impair the quality of decisions.”).

As the *Vaughn* and Mark Graff’s declaration make clear, withholding this informal peer review was also appropriate, as their input was used by NOAA to ensure that only the highest quality scientific product would be released. Tom Karl, for example, asked a scientist affiliated with the National Center for Atmospheric Research to comment on a draft while the paper was in development, and that scientist provided insights and feedback in response. Graff Decl. ¶ 59; *Vaughn* part 1 bates 66-67 (explaining redacted information contained feedback and review of a data analysis for the paper and raises issue for further discussion). Other climate science experts responded to the authors upon learning from *Science* of the pending publication, as commonly occurs after an author submits a high-profile scientific paper for publication. *See* Graff Decl. ¶ 60. Two other experts provided feedback on the Paper, discussed implications of the Hiatus

Paper's conclusion, or provided and discussed data analyses, Graff Decl. ¶¶ 62-63, *Vaughn* part 1 at bates 292-93, which helped provide important feedback about the agency's product and informed the agency's continuous, ongoing work of updating agency datasets and trend analyses, Graff Decl. ¶¶ 62-63; *see Vaughn* part 1 at bates 295-96 (noting that expert's work may be incorporated into a future NOAA analysis). With respect to these types of communications, a general and well-established presumption exists that these communications will not be shared with a wider audience, which is essential to scientific exchanges and the testing and refinement of ideas that help ensure that the agency's scientific products are well developed and robust. *See Spinrad* Decl. ¶ 20. Disclosing this material could inhibit candid discussions and exchanges and chill the open and frank exchanges upon which NOAA scientists rely. *See Graff* Decl. ¶ 64.

In sum, NOAA's *Vaughn* and declarations make plain that the agency appropriately applied Exemption 5 to redact and withhold information protected by the deliberative process privilege.

III. NOAA Properly Withheld Information Under Exemption 6

Exemption 6 protects the privacy of individuals from unwarranted invasion. Exemption 6 allows the withholding of information about individuals in "personnel and medical files and similar files" when the disclosure of such information would constitute a "clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Exemption 6 requires the agency to balance the individual's right to privacy against the public's interest in disclosure. *See U.S. Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976); *Reed v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991). When weighing the public interest involved in disclosure, the court considers: (1) whether disclosure would serve the "core purpose" for which Congress enacted the FOIA. *i.e.*, to show "what the government is up to," and (2) the public interest in general, not particular interests of

the person or group seeking the information. *U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 750, 775 (1989).

Here, Exemption 6 has been applied to protect information in which individuals have a recognized privacy interest, specifically, the phone numbers of NOAA scientists. *See, e.g., Vaughn* part 1 at bates 23. Because this information can be identified as applying to a specific individual, the information withheld under Exemption 6 constitutes “similar files” within the meaning of statute; courts have routinely held that phone numbers meet this threshold test. *See, e.g., Judicial Watch, Inc. v. U.S. Dep't of State*, 875 F. Supp. 2d 37, 47 (D.D.C. 2012); *Smith v. Dep't of Labor*, 798 F. Supp. 2d 274, 283 (D.D.C. 2011); *Lowy v. IRS*, No. C 10-767, 2011 WL 1211479, at *16 (N.D. Cal. Mar. 30, 2011).

This threshold test having been met, the next step is to compare the privacy interest at stake with the benefit disclosure would provide toward the public’s understanding of how government operates. *Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994). Here, there is a substantial privacy interest at stake in preventing the burden of unsolicited phone calls and harassment. *See Moore v. Bush*, 601 F. Supp. 2d 6, 14 (D.D.C. 2009); *United Am. Fin., Inc. v. Potter*, 667 F. Supp. 2d 49, 65-66 (D.D.C. 2009); *cf. Shurtleff v. EPA*, 991 F. Supp. 2d 1, 18 (D.D.C. 2013) (protecting email address). By contrast, an individual’s phone number sheds no light on the operations and activities of the agency. NOAA balances the individual’s strong privacy interests against the fact that release of this information would fail to shed any light on the conduct of governmental business, and reasonably concluded that, with regard to the information withheld pursuant to Exemption 6, the individual privacy interests outweighed any public interest in disclosure. Graff Decl. ¶ 66. *See FLRA*, 510 U.S. at 497 (“We must weigh the privacy interest . . . in nondisclosure . . . against the only relevant public interest in the FOIA

balancing analysis the extent to which disclosure of the information sought would she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know what their government is up to."). Accordingly, Exemption 6 was properly applied.

IV. NOAA Has Produced All Reasonably Segregable Information

The FOIA requires that, if a record contains information that is exempt from disclosure, any "reasonably segregable" information must be disclosed after deletion of the exempt information, 5 U.S.C. § 552(b), unless the non-exempt portions are "inextricably intertwined with exempt portions." *Mead Data Ctr. v. U.S. Dep't of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977); *Kurdyukov v. U.S. Coast Guard*, 578 F. Supp. 2d 114, 128 (D.D.C. 2008). This provision does not, however, require disclosure of records in which the non-exempt information that remains is meaningless. *See Nat'l Sec. Archive Fund v. CIA*, 402 F. Supp. 2d 211, 221 (D.D.C. 2005) (concluding that no reasonably segregable information existed because "the non-exempt information would produce only incomplete, fragmented, unintelligible sentences composed of isolated, meaningless words"). Consistent with this obligation, NOAA has reviewed each of the documents redacted or withheld and has concluded that there is no additional non-exempt information that may reasonably be segregated and released. *See* Graff Decl. ¶ 67. Accordingly, no further non-exempt material is subject to release.

CONCLUSION

NOAA has conducted an adequate search for documents responsive to Plaintiff's request, and properly withheld information exempt from disclosure under Exemptions 5 and 6. Furthermore, all reasonably segregable information has been released to Plaintiff. For these reasons, the Department of Commerce respectfully requests that summary judgment be entered in its favor.

Dated: December 15, 2016

Respectfully submitted,

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Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

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Counsel for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF UNITED STATES
DEPARTMENT OF COMMERCE’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h)(1), the following is a statement of material facts as to which the movant, the United States Department of Commerce (“the Department”), contends there is no genuine issue:

1. Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change released a report in stages that concluded that the upward global surface temperature trend from 1998-2012 was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) ¶ 9.
2. The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” Graff Decl. ¶ 9.
3. The National Centers for Environmental Information (“NCEI”) at NOAA produces and maintains datasets for global ocean areas and global land areas. Graff Decl. ¶ 6.
4. NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. Graff Decl. ¶ 5.

5. NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. Graff Decl. ¶ 7.
6. On June 4, 2015, a study authored by NOAA scientists was published in *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Graff Decl. ¶ 23.
7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. Graff Decl. ¶ 10.
8. Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Graff Decl. ¶ 11.
9. Karl sought feedback on the draft paper, and a team of scientists at NOAA formed to develop a manuscript. *See* Graff Decl. ¶¶ 11-13.
10. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers’ work, and so on. Graff Decl. ¶ 13.
11. Such collaboration via discussions and drafts is standard practice at NCEI. Graff Decl. ¶ 13.
12. In December 2014, the authors submitted the draft paper to the journal *Science*. Graff Decl. ¶ 14.

13. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. Graff Decl. ¶ 20.
14. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See* Graff Decl. ¶ 21.
15. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. Graff Decl. ¶ 23.
16. Plaintiffs' FOIA request, dated October 30, 2015, sought in relevant part:
 1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
 2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
 3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.Graff Decl. ¶ 24; *see also* ECF No. 8-1.
17. Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25.
18. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. Graff Decl. ¶ 25.

19. During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. Graff Decl. ¶ 26.
20. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. Graff Decl. ¶ 26.
21. The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2.
22. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” Second Joint Status Report, ECF No. 10 at 2; Graff Decl. ¶ 27.
23. NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. Graff Decl. ¶ 33.
24. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. Graff Decl. ¶ 35.
25. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. Graff Decl. ¶¶ 36-38.

26. One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. No additional records responsive to this request from that author are known to have existed following his retirement. *See* Graff Decl. ¶ 36 n.1.
27. There were no common areas at NCEI for NOAA to search. Graff Decl. ¶ 37.
28. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. Graff Decl. ¶ 44.
29. On May 27, 2016, NOAA produced 102 pages of material in its entirety and 90 partially redacted pages. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2
30. NOAA informed Plaintiff at that time that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29
31. Upon further review of the withheld information, NOAA made two supplemental productions. *See* Graff Decl. ¶¶ 30-31.
32. On September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's phone number), Graff Decl. ¶ 30.
33. Contemporaneously with this filing (on December 15), NOAA is releasing an additional 62 records. Graff Decl. ¶ 31.
34. NOAA withheld information pursuant to FOIA Exemption 5 and the deliberative process privilege. *See Vaughn Index.*

35. NOAA withheld information pursuant to FOIA Exemption 6. *See Vaughn* Index.

Dated: December 15, 2016

Respectfully submitted,

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ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2016, I filed the attached electronically with the Clerk of the United States District Court for the District of Columbia through the CM/ECF system, which caused the following counsel of record to be served by electronic means:

Lauren Burke
Judicial Watch, Inc.
425 Third Street SW, Suite 800
Washington, DC 20024
(202) 646-5172
Lburke@judicialwatch.org

Attorney for Plaintiff

/s/ Kevin M. Snell

From: John Almeida - NOAA Federal <john.almeida@noaa.gov>
Sent: Monday, December 19, 2016 7:42 AM
To: Mark Graff - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17
Attachments: ATT00001.html; Friends of Animals LIONS.PNG; FOA v. NOAA Complaint.pdf; ATT00004.html; 16-cv-3007 Docket.pdf; ATT00006.html

(b)(5)

----- Forwarded message -----

From: Lois Schiffer - NOAA Federal <lois.schiffer@noaa.gov>
Date: Sat, Dec 17, 2016 at 10:55 PM
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17
To: john.almeida@noaa.gov

John we can discuss next week

Sent from my iPhone

Begin forwarded message:

From: "McClelland, Michelle (Federal)" <mMcClelland@doc.gov>
To: "Cannon, Michael (Federal)" <MCannon@doc.gov>
Cc: "Schiffer, Lois (Federal)" <Lois.Schiffer@noaa.gov>
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

Incoming from DOJ on subject FOIA case. (b)(5). Thx

Sent from my iPhone

Begin forwarded message:

From: "Traskos, Kevin (USACO)" <Kevin.Traskos@usdoj.gov>
To: "Sandoval, Marisela (USACO)" <Marisela.Sandoval@usdoj.gov>
Cc: "Kellogg, Ian (USACO)" <Ian.Kellogg@usdoj.gov>, "Butler, Leah (USACO) [Contractor]" <Leah.Butler3@usdoj.gov>, "Jones, Meghan (USACO)" <Meghan.Jones@usdoj.gov>, "McConnell, Caitlin (USACO)" <Caitlin.McConnell@usdoj.gov>, "McClelland, Michelle (Federal)" <mMcClelland@doc.gov>
Subject: FW: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

(b)(5)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Thanks!

Kevin

Warning: This message may contain confidential or privileged information. If you have received this email in error, please contact me and delete the email. Thank you.

Kevin Traskos

Chief, Civil Division

Assistant U.S. Attorney

U.S. Attorney's Office, District of Colorado

1225 17th Street, Suite 700

Denver, Colorado 80207

[\(303\) 454-0184](tel:3034540184)

Fax: [\(303\) 454-0404](tel:3034540404)

Kevin.Traskos@usdoj.gov

From: McConnell, Caitlin (USACO)
Sent: Monday, December 12, 2016 3:13 PM
To: Traskos, Kevin (USACO) <KTraskos@usa.doj.gov>

Cc: Jones, Meghan (USACO) <mjones1@usa.doj.gov>

Subject: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

Hello,

Today we received the attached summons and complaint via certified mail. (b)(5)

[REDACTED]

(b)(5)

Thank you,
Caitlin

(b) (4)

(b) (4)

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Image not available for this document, ID: 0.7.3707.13502 000004

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael Harris
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
TORTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
CHECK YES only if demanded in complaint.
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552 (a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
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Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
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Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs' electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if 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). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

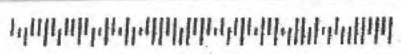
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

RECEIVED

2016 DEC 12 PM 1:48

U.S. DISTRICT COURT
DISTRICT OF COLORADO
CENTENNIAL

Tarris
Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



MAIL



7016 0910 0001 0622 7255

CPU U.S. POSTAGE
PB 1P 000
3658536
FCMF

\$ 7.36⁰

MAILED DEC 09 2016
80112



6072398

RETURN RECEIPT
REQUESTED

T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202

Last Name: friends of animals First:
 FBI #: SSN #:
 CATS #: EIN #:
 PDID #: Marshals #:

Name Matching

- Spelling Match
- Sounds Like

Explanation

Participant	USAOID	Alias	Stat Role		AUSA	Court	Court #
FRIENDS OF ANIMALS	2016V00861		A	P	IJK	DC	16-CV-0279
FRIENDS OF ANIMALS	2016V00092		C	P	IJK	DC	16-CV-00196-
FRIENDS OF ANIMALS	2016V00091		C	P	IJK	DC	16-CV-00194-

Move highlight bar to record and press <F3> to GOTO the Case Summary screen.

MON, 12-DEC-2016

From: Chua, Alvin (Federal) <achua@doc.gov>
Sent: Monday, December 19, 2016 8:59 AM
To: Almeida, John (Federal); Graff, Mark (Federal)
Cc: McKenna, Alice (Federal)
Subject: Friends of Animals v. NOAA
Attachments: Complaint.pdf

Good morning,

We just received word of a new suit against NOAA (b)(5)

?

Thanks,

Alvin Chua
Attorney
Office of the General Counsel | U.S. Department of Commerce
Office: 202.482.5023 | Fax: 202.482.2552
E-mail: achua@doc.gov

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys Michael Harris, Friends of Animals, Wildlife Law Program, 7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the
United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

II. BASIS OF JURISDICTION
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing:
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552 (a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
michaelharris@friendsofanimals.org

Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
Legal Director
Sea Shepherd Legal
2226 Eastlake Ave., E.
No. 108
Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs; electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if 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). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

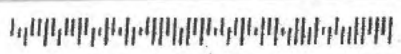
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

RECEIVED

2016 DEC 12 PM 1:48

U.S. DISTRICT COURT
DISTRICT OF COLORADO
CENTENNIAL

Tarris
Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



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RETURN RECEIPT
REQUESTED

T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202

From: Lamar Turner - NOAA Federal <lamar.turner@noaa.gov>
Sent: Monday, December 19, 2016 9:40 AM
To: Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Mark Graff - NOAA Federal; NMFS HQ PR FOIA Requests - NOAA Service Account; Amy Sloan - NOAA Federal; Daniel Bess - NOAA Federal; Jolie Harrison - NOAA Federal; Peaches Hodge-Tonic - NOAA Federal
Subject: FW: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17
Attachments: Untitled attachment 00245.htm; Friends of Animals LIONS.PNG; FOA v. NOAA Complaint.pdf; Untitled attachment 00248.htm; 16-cv-3007 Docket.pdf; Untitled attachment 00251.htm

For those who are unaware. Friends of Animals have filed a suit against NOAA on the 2016-000959 Cook Inlet Beluga FOIA request. (b)(5)

Lamar N. Turner

FOIA Coordinator
Office of Protected Resources
NOAA Fisheries
1315 East West Highway
Bldg. SSMC3, Room 13733
Silver Spring, Maryland 20910
301-427-8492

From: Lamar Turner - NOAA Federal [mailto:lamar.turner@noaa.gov]
Sent: Monday, December 19, 2016 9:15 AM
To: John Almeida - NOAA Federal
Cc: Deborah Ben-David - NOAA Federal
Subject: FW: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

John,

I have not seen the suit. (b)(5)

Lamar N. Turner

FOIA Coordinator
Office of Protected Resources
NOAA Fisheries
1315 East West Highway

Bldg. SSMC3, Room 13733
Silver Spring, Maryland 20910
301-427-8492

From: John Almeida - NOAA Federal [<mailto:john.almeida@noaa.gov>]
Sent: Monday, December 19, 2016 7:54 AM
To: Lamar Turner - NOAA Federal
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

Have you seen this new Friends of Animals FOIA suit? (b)(5)

[REDACTED]

Thanks!
John

----- Forwarded message -----

From: Lois Schiffer - NOAA Federal <lois.schiffer@noaa.gov>
Date: Sat, Dec 17, 2016 at 10:55 PM
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17
To: john.almeida@noaa.gov

John we can discuss next week

Sent from my iPhone

Begin forwarded message:

From: "McClelland, Michelle (Federal)" <mMcClelland@doc.gov>
To: "Cannon, Michael (Federal)" <MCannon@doc.gov>
Cc: "Schiffer, Lois (Federal)" <Lois.Schiffer@noaa.gov>
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

Incoming from DOJ on subject FOIA case. (b)(5). Thx

Sent from my iPhone

Begin forwarded message:

From: "Traskos, Kevin (USACO)" <Kevin.Traskos@usdoj.gov>
To: "Sandoval, Marisela (USACO)" <Marisela.Sandoval@usdoj.gov>
Cc: "Kellogg, Ian (USACO)" <Ian.Kellogg@usdoj.gov>, "Butler, Leah (USACO) [Contractor]" <Leah.Butler3@usdoj.gov>, "Jones, Meghan (USACO)" <Meghan.Jones@usdoj.gov>, "McConnell, Caitlin (USACO)" <Caitlin.McConnell@usdoj.gov>, "McClelland, Michelle (Federal)" <mMcClelland@doc.gov>
Subject: FW: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

(b)(5)

(b)(5)

Thanks!

Kevin

Warning: This message may contain confidential or privileged information. If you have received this email in error, please contact me and delete the email. Thank you.

Kevin Traskos

Chief, Civil Division

Assistant U.S. Attorney

U.S. Attorney's Office, District of Colorado

1225 17th Street, Suite 700

Denver, Colorado 80207

[\(303\) 454-0184](tel:(303)454-0184)

Fax: [\(303\) 454-0404](tel:(303)454-0404)

Kevin.Traskos@usdoj.gov

From: McConnell, Caitlin (USACO)
Sent: Monday, December 12, 2016 3:13 PM
To: Traskos, Kevin (USACO) <KTraskos@usa.doj.gov>
Cc: Jones, Meghan (USACO) <mjones1@usa.doj.gov>

Subject: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

Hello,

Today we received the attached summons and complaint via certified mail. (b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

(b)(5) [REDACTED].

Thank you,
Caitlin

(b) (4)

(b) (4)

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys Michael Harris, Friends of Animals, Wildlife Law Program, 7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the
United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

II. BASIS OF JURISDICTION
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing:
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552(a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
michaelharris@friendsofanimals.org

Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
Legal Director
Sea Shepherd Legal
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Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs' electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if 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). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

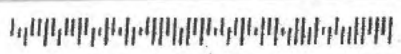
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

RECEIVED

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U.S. DISTRICT COURT
DISTRICT OF COLORADO
CENTENNIAL

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Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



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MAILED DEC 09 2016
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RETURN RECEIPT
REQUESTED

T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202

Last Name: friends of animals First:
 FBI #: SSN #:
 CATS #: EIN #:
 PDID #: Marshals #:

Name Matching

- Spelling Match
- Sounds Like

Explanation

Participant	USAOID	Alias	Stat Role		AUSA	Court	Court #
FRIENDS OF ANIMALS	2016V00861		A	P	IJK	DC	16-CV-0279
FRIENDS OF ANIMALS	2016V00092		C	P	IJK	DC	16-CV-00196-
FRIENDS OF ANIMALS	2016V00091		C	P	IJK	DC	16-CV-00194-

Move highlight bar to record and press <F3> to GOTO the Case Summary screen.

MON, 12-DEC-2016

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Image not available for this document, ID: 0.7.3707.13504 000005

Image not available for this document, ID: 0.7.3707.13504 000006

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, December 20, 2016 7:11 AM
To: Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal
Subject: Fwd: Filed!
Attachments: Dkt. 16 - 2 Vaughn Index.pdf; Dkt. 16 - 3 May 27 Cover Letter.pdf; Dkt. 16 - 4 Spinrad Declaration.pdf; Dkt. 16 - 5 Proposed Order.pdf; Dkt. 16 - Motion for Summary Judgment.pdf; Dkt. 16 - 1 Graff Declaration.pdf

(b)(5)

. I'll forward to you and you can share if you think it's appropriate.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

----- Forwarded message -----

From: Snell, Kevin (CIV) <Kevin.Snell@usdoj.gov>
Date: Thu, Dec 15, 2016 at 7:53 PM
Subject: Filed!
To: "Lowery, Ruth Ann (Federal)" <RuthAnn.Lowery@noaa.gov>, Rose Stanley - NOAA Federal <rose.stanley@noaa.gov>, "Davidson, Hillary (Federal)" <HDavidson@doc.gov>, "Myers, Jordan (Federal)" <jmyers@doc.gov>, "Vieira, Rodney (Federal)" <Rod.Vieira@noaa.gov>, "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>

Thanks everyone for your incredible efforts in this case. This was not an easy task and it truly took a team effort. I greatly appreciate everyone's help!

Hope everyone has great weekends!

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF MARK H. GRAFF

Pursuant to 28 U.S.C. § 1746, I, Mark H. Graff, declare and state as follows:

1. I am currently the Freedom of Information Act (FOIA) Officer for the National Oceanic and Atmospheric Administration (NOAA), which is a part of the United States Department of Commerce (DOC). I have occupied this position since September 6, 2015. My primary duties include management of requests submitted to NOAA for records made under both the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a (PA). In that capacity, I oversee NOAA's receipt and log-in of in-coming FOIA requests, the tasking and coordination of searches for responsive records, and review of out-going responses.

2. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, upon conclusions and determinations reached and made in accordance therewith, and upon my personal examination of

the withheld and redacted documents. Additionally, this declaration includes the search terms, locations and parameters agreed upon with the plaintiffs and utilized by those who conducted the search. I am personally familiar with Plaintiff Judicial Watch's FOIA request, which is at issue in this civil action. I submit this declaration in support of a motion for summary judgment filed by the Department of Commerce in the above-captioned lawsuit.

3. This declaration provides background information on the development of a paper entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* ("Hiatus Paper" or "the Paper"), which was published in June 2015 in the journal *Science* and is the focus of the FOIA request at issue in this case. It also explains NOAA's search for records responsive to Plaintiff's FOIA request and the FOIA exemptions applied in processing the responsive records. A *Vaughn* index (Exhibit 1) provides a detailed description of information withheld by NOAA and challenged by Plaintiff, as well as NOAA's basis for those withholdings.

I. BACKGROUND

4. The National Centers for Environmental Information (NCEI), located within the NOAA's National Environmental Satellite, Data, and Information Service (NESDIS), develops use-inspired datasets, products and reports that describe average weather conditions (and changes therein) over the United States and the globe. NCEI acts as the "Nation's Scorekeeper" regarding the trends and anomalies of weather and climate, focusing on essential climatic elements such as temperature and rainfall, as well as extreme events such as hurricanes and droughts.

5. NCEI produces and maintains datasets for global ocean areas and global land areas. Changes in surface temperature over long periods are studied using several datasets that are continuously maintained and updated. There are separate datasets for the ocean and the land, which are then merged to create a global dataset.

6. Scientists throughout the government, including at agencies other than NOAA and researchers outside of the government, use NOAA's temperature datasets for a variety of purposes, including for climatic research and climate assessments. NCEI scientists are continually working on improving these datasets to provide scientists and the public with the most up-to-date and accurate information.

7. NCEI scientists periodically interpret and analyze global datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. NCEI scientists use the most recent information from these datasets to propose new scientific theories and also re-evaluate earlier conclusions reached within the scientific community in light of new or updated data.

8. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data, work which is consistent with the mission of NOAA. Nine NOAA scientists contributed to this paper: Thomas Karl (the lead author), Dr. Anthony Arguez, Dr. Boyin Huang, Mr. Jay Lawrimore, Mr. James McMahon, Dr. Matthew Menne, Dr. Thomas Peterson, Dr. Russell Vose, and Dr. Huai-min Zhang. Thomas Karl is the former Director of NCEI. Jay Lawrimore, Dr. Russell Vose, and Dr. Huai-min Zhang are supervisory scientists at NCEI. Dr. Anthony Arguez and Dr. Matthew Menne are climate scientists at NCEI. Since the publication

of the paper, Dr. Thomas Karl and Dr. Thomas Peterson have retired, and Mr. James McMahon no longer works at NCEI.

9. The Intergovernmental Panel on Climate Change (IPCC) released a report in stages between September 2013 and November 2014 that concluded that the upward global surface temperature trend from 1998-2012 was lower than the upward global surface temperature trend from 1951-2012. This apparent observed slowing was dubbed the “hiatus.”

10. There were significant developments related to the alleged “hiatus” in the two years immediately following the release of the IPCC report. In particular, both 2013 and 2014 were among the top-five warmest years on record for the globe. In addition, NOAA scientists made significant improvements to its sea surface temperature dataset, one of the largest being a correction that accounted for the difference in data collected from buoys and ships. (Until the mid-1970s, ships were used to measure sea surface temperatures; since then, buoys have increasingly been used.) Scientists developed a method to correct for the difference between these two observing systems, and incorporated those corrections into its dataset and subsequently the paper that is the subject of this request.

11. On or about October 31, 2014, Director Karl shared with a group of NOAA scientists a draft of a paper that he had worked on himself, inspired by some of the papers exchanged previously by the NCEI scientists. The draft developed an idea for properly accounting for the “hiatus,” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Director Karl asked the scientists to provide feedback to his draft.

12. The scientists who received the draft responded with feedback in various forms, including exchanging drafts of the paper with edits done via track changes and sending emails providing feedback.

13. Until the paper was submitted to *Science*, many drafts and revisions were exchanged along with emails and one-on-one discussions about various aspects of the paper, including: suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers' work, and so on. Such collaboration via drafts and discussions in emails and orally is standard practice at NCEI.

14. On or about December 23, 2014, a NOAA author submitted the draft paper to *Science* via an online portal.

15. *Science* follows a formal peer review process that is described on their public website. See <http://www.sciencemag.org/authors/peer-review-science-publications>. Peer reviewers are subject matter experts in the topic of the submitted paper who are able to use their expertise to evaluate the scientific rigor and merit of the paper.

16. Peer reviewers provide feedback on an array of issues, including making an overall recommendation as to whether the paper should be published, in view of *Science's* mission and also providing more detailed critique on a range of issues. These issues include the technical rigor of the data and methods used and whether the conclusions of the report are novel or similar to work already published. See <http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

17. According to *Science*, their peer review process is anonymous. The identities of reviewers are never revealed to authors, and reviewers are instructed not to identify themselves to any entity, including the press. Reviews are shared only with the author, potentially other reviewers (for cross-comment), and the Board of the journal. See <http://www.sciencemag.org/authors/peer-review-science-publications>.

18. Reviewers are expressly instructed to treat the submitted manuscript as privileged and confidential:

The submitted manuscript is a privileged communication and must be treated as a confidential document. Please destroy all copies of the manuscript after review. Please do not share the manuscript with any colleagues without the explicit permission of the editor. Reviewers should not make personal or professional use of the data or interpretations before publication without the authors' specific permission (unless you are writing an editorial or commentary to accompany the article).

<http://www.sciencemag.org/authors/peer-review-science-publications>.

19. This is reinforced in the journal's Instructions to Peer Reviewers of reports, which states:

Confidentiality: We expect reviewers to protect the confidentiality of the manuscript and ensure that it is not disseminated or exploited. Please destroy your copy of the manuscript when you are done. Only discuss the paper with a colleague with permission from the editor. We do not disclose the identity of our reviewers.

<http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

20. The authors received via email the first round of reviews from *Science* on or about February 26, 2015. In this case, *Science* sent the manuscript to five peer reviewers. These reviewers provided their comments anonymously to NOAA through *Science*, as is standard in the peer review process for *Science*.

21. After determining the best response to all of the peer reviewer comments, the authors submitted the revised manuscript and a response to reviewer comments to *Science* via the online submission portal on or about March 27, 2015. See Categories C and D of part 2 of the *Vaughn* Index.

22. On or about April 22, 2015, the authors received the second round of reviews from *Science* via email. The authors developed responses to this second round of comments, made revisions accordingly, and submitted the revised manuscript and response to reviewer comments to *Science* via the online portal on or about May 5, 2015. *See id.*

23. After submitting the revised manuscript, the authors received notice that it would be published, received galley proofs, and approved them. On June 4, 2015, the paper was published online on the *Science* website. This was followed up by publication in the printed volume of *Science* on June 26, 2015 (Volume 348, Issue 6242, at 1469).

II. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S REQUEST

24. Plaintiff's FOIA request was addressed to NOAA, which is located within the Department of Commerce ("the Department"). The request sought, in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.

3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

25. When NOAA officials first reviewed the request, they determined that it did not reasonably describe the records sought. NOAA and the Department, through counsel, conferred with Plaintiff's counsel to negotiate a clear description of the materials sought.

26. During the course of those discussions, NOAA indicated to Plaintiff that it understood Plaintiff's request to reflect an interest in the Hiatus Paper. Defendant suggested Plaintiff modify the FOIA request to call for a search for all documents and communications referring to the Hiatus Paper from October 1, 2014 through June 4, 2015. Defendant offered to search the files of the nine authors of the Study. Plaintiff confirmed its interest in the Hiatus Paper, but indicated that it sought only records referring to the topics listed in its initial FOIA request.

27. The parties ultimately "reached an agreement regarding the scope of the request and the relevant search parameters," which was memorialized in the Second Joint Status Report, submitted to this Court on March 1, 2016. Regarding the documents at issue in this litigation, the parties agreed that:

"Defendant will search the records of the nine authors of the June 4, 2015 study entitled Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus published in Science ("Karl Study") for records referring to the Karl Study and that contain the following search terms:

(1) "NMAT" and "Night Marine Air Temperatures";

(2) "ISTU", "ICOADS", and "sea ice";

(3) "satellite", "Advanced Very High Resolution Radiometer", "AVHRR", "Advanced Microwave Scanning Radiometer", and "AMSR".

For items 1, 2, and 3 of Plaintiff's FOIA request, the timeframe for the searches will be October 1, 2014 to June 4, 2015."

See Second Joint Status Report, ECF No. 10.

28. In the Third Joint Status Report, submitted to this Court on March 22, 2016, the parties agreed that NOAA, through the Department, would produce responsive, non-exempt records, as described above, to Plaintiff by May 27, 2016. *See* ECF No. 11.

29. On May 27, 2016, the Department released 102 pages of material in its entirety and 90 partially redacted pages. Defendant withheld in their entirety 8,013 pages of records. *See* May 27 Cover Letter (Exhibit 2); *see also* Fourth Joint Status Report, ECF No. 12. In that letter, NOAA informed Plaintiff that "[b]ecause the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records." Exhibit 2.

30. NOAA made a supplemental release of records on September 16, 2016, providing Plaintiff with an additional 44 pages of released material after further review the records identified and described in the letter accompanying the May 27, 2016, production, 7 of which were partially redacted because they included Tom Karl's personal telephone number.

31. After the September release, NOAA continued to evaluate the responsiveness and exemption status of the records that had been identified. Contemporaneously with this filing (on December 15), NOAA is releasing another 62 records providing Plaintiff with additional records that were previously withheld.

32. Because of the further segregation and responsiveness review NOAA conducted that led to the release of additional material to the Plaintiff, the page counts in the May 27 cover letter (and also the Fourth Joint Status Report) originally provided to Plaintiff are no longer accurate. A complete listing of all records withheld in full or in part pursuant to an exemption is reflected in the attached *Vaughn* Index.

II. THE SEARCH PROCESS

33. After NOAA and Plaintiffs, through counsel, reached an agreement as to the terms of the search for this FOIA request, it was determined that the records requested resided within one office: NCEI. NCEI's headquarters is located in Asheville, North Carolina. This determination was based on the fact that all of the agreed-upon custodians work or had worked within NCEI during the time in which responsive records were created.

34. The nine authors of the Hiatus Paper were Thomas R. Karl, Anthony Arguez, Boyin Huang, Jay H. Lawrimore, James R. McMahon, Matthew J. Menne, Thomas C. Peterson, Russell S. Vose, and Huai-Min Zhang.

35. NOAA instructed eight of the nine authors (record custodians) that were still within NCEI to conduct a search in accordance with the parameters agreed to by the parties and memorialized in the Second Joint Status Report. NOAA specified that custodians must search their email, electronic, and paper records.

36. Each records custodian still at NCEI¹ searched his own records in accordance with these instructions. As such, all search terms and parameters of the search as agreed upon by the Plaintiff were utilized by NOAA in the search of the files where responsive records were likely to be filed.

37. There were no common areas to be searched at NCEI because the authors all kept their own files separate.

38. After the custodians collected their records, they were forwarded for responsiveness and exemption review.

39. The search conducted was reasonably calculated to uncover all relevant, non-duplicative documents.

40. The Department compiled two sets of bates-numbered files, which included, in addition to the partially redacted and fully withheld email records, placeholder pages, which are discussed further in Paragraph 49. One bates-numbered file reflects the email records, and the other bates-numbered file reflects documents, as contained on parts 1 and 2 of the *Vaughn*.

41. Each record was evaluated separately for responsiveness, and each email was deemed to be one record.

42. In the case of an email with attachment(s), responsiveness determinations were made independently for that email and any attachment(s) to that email.

43. For email records that were joined with other emails in a chain, NOAA deemed responsive any email that related to the Paper and contained an agreed-upon search term as well

¹ One custodian (Thomas Peterson) had retired by the time of the search. His archived email inbox and outbox were searched by another author who was still with NOAA at the time. No additional, non-duplicative records created by Mr. Peterson that are responsive to this request are known to have existed following the retirement of Mr. Peterson.

as other, surrounding emails that were related to or provided important context for the email that contained the search term. If an email appeared to directly relate to the subject matter of the request in an email containing the search term, a case-by-case determination was made in good faith and in the effort to maximize transparency as to whether that record was responsive even though not technically within the search terms outlined in the Second Joint Status Report.

44. The search was reasonably calculated to uncover all relevant documents and there are no known locations where additional, non-duplicative, responsive material is likely to be found. Accordingly, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched.

III. The Vaughn Index

45. I have read the *Vaughn* index attached as Exhibit 1 and reviewed the documents referenced in that index. Based on my review of the documents and on information provided me in the course of my official duties, I have determined that the material redacted from the referenced documents falls within the enumerated FOIA exemptions identified in the index.

46. The *Vaughn* index is divided into two parts. The first part covers responsive emails that were withheld or redacted. It identifies each record by Bates stamp numbers (which correspond to the numbering on records provided to Plaintiff), the originator, the recipient(s), the date of the record, the title of the email, the exemption invoked, and the basis for withholding.

47. Due to how the email records are stored in and were printed from the user's email accounts, some email records are duplicative but certain copies truncate the metadata for that record email (e.g., the sender, recipient, subject line, who was cc'd on the records). Sometimes

NOAA was able to reconstruct the information by looking to duplicate instances that were printed differently, or by going to the original files. We have generally inferred that the subject line that prints at the top of the printed email chain carried through for individual email records connected to that string of emails.

48. The second part of the *Vaughn* index covers non-email documents that were withheld in their entirety, except for a relatively small number of documents that were released to Plaintiffs upon further review. These documents consist almost exclusively of five categories of records. Records that fell into one of the five categories are labeled in the *Vaughn* index by a letter that corresponds to a category. The few exceptions that do not fall into one of the five categories have a more detailed description.

49. The *Vaughn* index reflects occasional “gaps” in the Bates stamp numbering. For example, *Vaughn* part one reflects an entry for bates page 1, and the next entry is for bates page 4. Such “gaps” exist for three reasons. First, not all pages had redacted information. Only pages with redacted information are accounted for on the *Vaughn*. Second, NOAA, in an effort to be transparent during production, included pages that served as “placeholders” for records in email chains that were removed because those records were either non-responsive or were fully withheld under Exemption 5. For example, if one page with responsive records was produced with redactions, followed by four fully withheld pages of records, the four fully withheld pages were represented in the production by a placeholder page that indicated four pages of material had been withheld as either not responsive or as exempt under Exemption 5. That placeholder page was bates stamped during the initial production, but NOAA has not listed it in the *Vaughn*

index. And third, NOAA removed bates-marked documents that were non-responsive that had been inadvertently bates stamped during the initial production. The withheld records, if responsive, are represented elsewhere in the *Vaughn* index.

50. As reflected in the first part of the *Vaughn* index, NOAA withheld or redacted emails under Exemption 5 because they are protected by the deliberative process privilege. *See, generally, Vaughn* part 1. These records are inter-agency or intra-agency communications. The bulk of this information reflects the predecisional and deliberative exchange of ideas and recommendations among scientists within and outside NOAA as NOAA scientists developed and edited the Hiatus Paper or discussed the underlying analysis of the datasets for purposes of developing the paper. The information also includes communications among NOAA personnel carrying out related agency deliberations such as development of public communications and presentations to Congress. The communications are, unless otherwise indicated, among NOAA personnel and reflect agency deliberations or input to agency determinations. These deliberations were in preparation for agency decisions, including how to analyze and present the data and interpretation. A relatively small number of the deliberative communications reflect input from non-federal scientists who were contacted either by one of the authors or by the journal *Science* to provide feedback and input on the Paper. These non-federal scientists provided NOAA's scientists input for the agency's ongoing processes of developing the Hiatus Paper, as well as providing input for the agency's potential updating of underlying datasets and analysis based on those datasets. Additionally, one scientist provided input to inform the agency's development of a communications plan for the paper.

51. In addition to the emails redacted or withheld, NOAA withheld drafts of the Hiatus Paper. *See Vaughn* part two Category A. These documents are inter-agency or intra-agency drafts. This category includes the drafts of the “supplementary materials” that accompanied the Hiatus Paper and were made available for download by *Science* upon publication of the Paper. Category A in the *Vaughn* Index sometimes lists the draft paper text, figures and supplementary materials as one entry and sometimes separately. These were pre-decisional drafts that contained the opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or expert reviewers’ comments on earlier drafts of the paper. Disclosure of deliberative draft documents that were not ultimately finalized or adopted by NOAA risks confusing the public concerning NOAA’s position and also risks data or statements being taken out of context. Disclosure of these deliberative draft materials would also seriously undermine the quality and integrity of NOAA’s decisionmaking process, by deterring NOAA staff or experts outside the agency who are collaborating in development of the agency’s work from expressing their candid views on the development of data analysis and presentation.

52. NOAA also withheld documents that contain questions for discussion and draft graphs that were circulated by an author and created for author discussions during the development of the Hiatus Paper. *See Vaughn* part two Category E. These records are inter-agency or intra-agency documents. These documents are deliberative and pre-decisional, as they

reflect NOAA scientists' deliberations as to what constitutes the best data analysis and presentation for the Hiatus Paper.

53. NOAA also withheld drafts of a cover letter from Tom Karl to *Science* magazine in response to peer review comments. *See Vaughn* part two Category B. These records are inter-agency or intra-agency drafts. These drafts are predecisional and deliberative in that they include discussions and exchanges among authors in determining what to include, and how to present, their formal letter to accompany their peer review responses. The draft cover letters to *Science* contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' approach had not been finalized at that point.

54. NOAA also withheld draft responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. *See Vaughn* Index part two Category C. These records are inter-agency or intra-agency drafts. These drafts reflect pre-decisional discussions and proposed responses to peer review comments. The drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers. These drafts helped the NOAA authors determine how best to respond to comments provided during the peer review process initiated by the submission of the Hiatus Paper to *Science* for potential publication. These documents are internal, pre-decisional drafts that reflect the view of NOAA authors as to how to present their response to peer review feedback.

55. NOAA also withheld the final responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. See *Vaughn* Index Part 2 Category D. These records are inter-agency or intra-agency documents. These documents are predecisional and deliberative because they are responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. The responses were submitted as part of a process to assist in the authors' deliberations regarding whether and in what form to publish the paper. Confidentiality is important to the peer review process, and disclosure of the responses to peer reviews would discourage the sharing of candid thoughts of both the reviewers and of the scientists.

56. In addition to this formal peer review, NOAA's authors also welcomed the assistance of informal peer review from a limited group of scientific experts in evaluating the underlying datasets and developing the Hiatus Paper. It is common for NOAA scientists to seek input from other qualified experts to get a second opinion on a working hypothesis or to provide expertise that an author's affiliated organization may lack. Sometimes those scientists are employed outside the federal government, but they share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science.

57. This collegial relationship and shared goals lays the groundwork for an author to reach out for the kind of honest, confidential feedback necessary to formulate a sustainable, justified scientific conclusion.

58. Each of these scientists who offered their assistance is highly regarded in their specialized fields. Their prior work represents a portion of the prior published literature on the

alleged hiatus. Some of those works were consulted by the team in developing the “hiatus” paper and were cited as references in it.

59. One of the outside scientists who contributed (and is listed in the “Acknowledgements” section of the Hiatus Paper) is Dr. Gerald (Jerry) A. Meehl, an affiliate with the National Center for Atmospheric Research (NCAR), which is a National Science Foundation Federally Funded Research and Development Center. *See* <https://www2.ucar.edu/about-us/quick-facts>. In November 2014, Director Karl emailed Dr. Meehl and invited him to comment on drafts of the paper, and he provided insights and feedback in response. *See* Bates 66 (11/27/14) (released).

60. If a paper is expected to get an unusual amount of attention, a journal may seek pre-publication reactions from experts in the field outside of that journal’s formal peer review process. On occasion, those experts who are contacted by the journal will then directly communicate with the author(s) of the article and share their thoughts on the article.

61. These communications provide important feedback to the authors on the Hiatus Paper and often provide information, relied upon by NOAA, about the external expert’s own related recent or ongoing work. These communications provide input to the continuous, ongoing work to update and improve datasets and trend analyses, as described in Paragraphs 5 through 7.

62. One outside scientist who provided input (and is cited in the references for the Hiatus Paper) is Dr. Kevin E. Trenberth, who (like Dr. Meehl) is also affiliated with the NCAR. Dr. Trenberth was contacted for his expertise by a journalist prior to publication of the Hiatus Paper and asked to provide comment on the paper. Dr. Trenberth then contacted Director Karl

by email to provide feedback and discuss implications of the conclusion in light of other literature. *See* Bates 379 (6/1/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve datasets and trend analyses. In part, this information was also provided to inform NOAA in its deliberations as it formulated its public communications messaging for the Hiatus Paper. *See* Bates 381-382 (6/1/15).

63. Last, Dr. Kevin Cowtan, who is affiliated with the University of York in the United Kingdom, is an outside scientist who contacted Dr. Boyin and Director Karl, after being contacted by a writer at *Science* who was seeking comment on the paper before publication, during the embargo period. *See* Bates 292-293 (6/2/15). Those emails indicate that all participants understood and respected that there was an embargo on publicly disseminating or discussing the work until it was officially released on June 4. *See, e.g.*, Bates 295 (6/2/15). Director Karl indicated in an email that he would like to continue to review and incorporate Dr. Cowtan's work in NOAA's ongoing work. *See* Bates 295-296 (6/2/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve our datasets and trend analyses.

64. Disclosure of any of this information that is pre-decisional and deliberative would inhibit candid internal discussions and expressions of ideas, recommendations, criticism, and judgments regarding the development of scientific theories and presentations of information to the public and to Congress. Disclosure of the details of these confidential discussions, drafts, and responses, could reasonably be expected to chill the open and frank exchange of comments

and opinions that occurs between NOAA scientists and a limited group of qualified outside experts at such times. It would also inhibit candid internal discussions and the expression of recommendations and judgments regarding preferred courses of action for agency personnel.

65. To the extent the redacted or withheld information contains some factual material, the authors' selection and presentation of that factual material reflects the agency's deliberative process and is therefore protected from disclosure. Singling out a particular data point in the course of a deliberative discussion reflects a preliminary judgment or argument rather than an assertion of scientific fact. There is a risk of misconstruing or taking out of context an instance where one piece of information has been singled out for purposes of an informal discussion.

66. With regard to information withheld pursuant to exemption (b)(6), NOAA has determined that the individual privacy interests outweighed the public interest in disclosure.

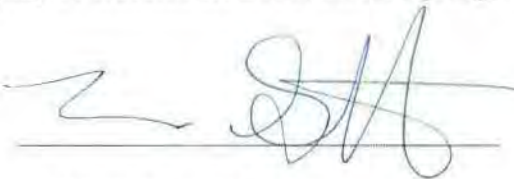
67. I am further satisfied that NOAA has reasonably concluded that there was no additional non-exempt, responsive information that could be reasonably segregated and released to the plaintiff.

IV. CONCLUSION

In summary, the Department conducted thorough searches of all components that were reasonably likely to maintain responsive records and withheld only reasonably segregable information under exemption (b)(5) and (b)(6). Additionally, the search was reasonably calculated to uncover all relevant documents, and there are no known locations where additional, non-duplicative, responsive material is likely to be found.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 14th day of December, 2016, Silver Spring, Maryland.

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a large, looped 'G' and 'A'.

Mark H. Graff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 1 to Declaration of Mark Graff

Vaughn Index Part 1: Emails

Bates Page	Originator	Addressee	Date	Time	Title	Exemption	Released Status	Basis
1	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	NOAA affiliate asking NOAA scientist for clarification on data results from the paper prior to publication for development of communications materials related to the paper.
4	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
6	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	NOAA scientist sharing draft data analysis, based on scientist discussions, for development of the paper with other scientists.
14	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made to the paper. Email is duplicate of email found on page 102.
14	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of supplemental materials for the paper and discussing edits made to the paper.
14-15	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made for the development the paper.

15	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-hiatus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
15	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
17	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist discussing edits to be made for development of the paper. Asking another NOAA scientist about work to be done for the paper.
19	Peterson, Thomas C.	McMahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
22	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
22-23	McMahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist asking another scientist for clarification on data analysis conducted for the development of the paper.
23	Zhang, Huai-min	McMahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Personal cell phone number of scientist.
25-26	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.

26	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
27	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
27-28	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
28	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
28-29	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
33	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
37	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.

37-38	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.
38-40	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper (the scientist's responses are inserted into text of earlier email).
41	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
41	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
42	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis and graphics for the paper.
42	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis and graphics for development of the paper with other scientists.
45	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and asking about edits to be made to the paper.

48	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is cut off but text is duplicate of full text on page 42.
48	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48-49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49-50	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
50	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.