

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, August 31, 2017 4:56 PM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Closeout for NOAA FOIA Request DOC-NOAA-2017-000299 (REVIEW/SIGN)
Attachments: Draft FAL - DOC-NOAA-2017-000299 mhg.pdf

Awesome--signed and attached. The only chang (b)(5)

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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On Thu, Aug 31, 2017 at 4:47 PM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:
Updated FAL attached.

On Thu, Aug 31, 2017 at 4:37 PM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:
Understood. I will update the letter.

Lola

On Thu, Aug 31, 2017 at 4:36 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

With this on (b)(5)

. Sorry, I know it seems like a hassle...

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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On Thu, Aug 31, 2017 at 4:34 PM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Mark (b)(5)

I've attached the draft FAL and tasker for your review/approval....and if you would signature.

Please let me know if you have questions.

R/

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6)

lola.m.stith@noaa.gov

--

Lola Stith

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lola.m.stith@noaa.gov



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

August 31, 2017

Mr. Chris Hogan
4350 East-West Highway
Suite 550
Bethesda, MD 20816

Re: FOIA Request DOC-NOAA-2017-000299

Dear Mr. Hogan:

This letter responds to your Freedom of Information Act (FOIA) request entered into FOIAonline (FO), our request tracking database, on 11/30/2016.

You requested: *Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of the following document, the Agency Fact Sheet/Brochure or a similar document providing a description or overview of the Agency. I would like to receive the information in a PDF document or Word document.*

We do not have an agency brochure. We do have fact sheets, and you can retrieve these public records at links on this site: <http://www.noaa.gov/about-our-agency>.

Your request is now complete. If you have any questions or concerns or would like to discuss any aspect of your request, you may contact the analyst who processed your request Scott Smullen by email at foia@noaa.gov. You may also contact NOAA's FOIA Public Liaison:

Mr. Robert Swisher
National Oceanic & Atmospheric Administration
1315 East West Highway
Silver Spring, MD 20910
telephone at 301-628-5755; email at robert.swisher@noaa.gov

Please refer to your FOIA request tracking number, DOC-NOAA-2017-000299, when contacting us.

In addition, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
e-mail at ogis@nara.gov;
telephone at 202741-5770; toll free at 1 877-684-6448; facsimile at 202-741-5769

You have the right to appeal this disposition for your FOIA request. An appeal must be received within 90 calendar days of the date of this response letter. Address your appeal to the following office:

Assistant General Counsel for Employment, Litigation and Information
U.S. Department of Commerce
Office of the General Counsel, Room 5896
1401 Constitution Ave., NW
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>. The appeal should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error.

The appeal letter, the envelope, and the e-mail subject line should be clearly marked "Freedom of Information Act Appeal." The e-mail, FOIAonline, and office mail are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, FOIAonline, or the office after normal business hours will be deemed received on the next normal 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.

Sincerely,

GRAFF.MARK.HY
RUM.151444789
2

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: 2017.08.31 16:54:22 -04'00'

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, September 18, 2017 10:47 AM
To: Lola Stith - NOAA Affiliate
Subject: Fwd: DOJ Template Language for FALs

Hey Lola,

The forward facing site apparently still has the "pre-2016 FOIA Improvement Act" appeal language. Can we get this updated? Do I need to bounce this off of Allison?

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

From: Karen Robin - NOAA Federal <karen.robin@noaa.gov>
Date: Mon, Sep 18, 2017 at 9:56 AM
Subject: RE: DOJ Template Language for FALs
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>

Hi Mark,

Regarding the new appeal language ... does the appeal info on this page need updating?
<http://www.noaa.gov/foia-freedom-of-information-act>

Yours,
Karen

—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

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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: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]

Sent: Tuesday, August 22, 2017 8:13 AM

To: Symone Stone - NOAA Affiliate; Denise Hamilton - NOAA Federal; Steven Goodman - NOAA Federal; Samuel Dixon - NOAA Affiliate; Lisa Love - NOAA Federal; Nkolika Ndubisi - NOAA Federal; Maria Williams - NOAA Federal; Annie Thomson - NOAA Federal; Gregory Raymond - NOAA Federal; James LeDuc - NOAA Federal; Devin Brakob - NOAA Federal; Velna Bullock - NOAA Federal; Elizabeth McLanahan - NOAA Federal; Scott Smullen - NOAA Federal; Mary Ann Whitmeyer - NOAA Federal; Mark Seiler - NOAA Federal; Jerry McNamara; Stephen Lipps - NOAA Federal; Karen Robin - NOAA Federal; Shem Yusuf - NOAA Federal; DALTON CUMMINGS - NOAA Affiliate; Tejuana Michael - NOAA Federal

Cc: Lola Stith - NOAA Affiliate; Robert Hogan; Robert Swisher - NOAA Federal

Subject: DOJ Template Language for FALS

Good Morning,

During the last Chief FOIA Officer's meeting, DOJ and OGIS provided sample language to use in agency Final Action Letters (FAL). DOC has confirmed that we are to continue to provide appeal language in all FALS, including full grants, in order to provide the sufficient notice required by 15 CFR 4.10 and 4.7, consistent with the DOC Best Practices issued in 2016.

As such, please find attached the DOJ-suggested template language for adverse determinations. I'm also attaching a "full release" template for reference. DOC has asked that we begin utilizing the template language immediately. Again, although the "full release" template DOJ provided does not include appeal language, considering the DOC regulations, all FAL's should include the appeal language that is contained in the template adverse FAL below. Thank you and best regards.

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

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Lola Stith - NOAA Affiliate

From: Lola Stith - NOAA Affiliate
Sent: Monday, September 18, 2017 10:50 AM
To: Mark Graff - NOAA Federal
Subject: Re: DOJ Template Language for FALs

Hey Mark - Yes. Allison would be the correct POC to update the public FOIA site.

Lola

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To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>

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Yours,
Karen

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Karen Robin
FOIA Liaison

NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

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--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6)

lola.m.stith@noaa.gov

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, September 18, 2017 10:59 AM
To: Lola Stith - NOAA Affiliate
Subject: Re: DOJ Template Language for FALs

Ugh--I liked it so much when we could just directly change this stuff.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
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From: Karen Robin - NOAA Federal <karen.robin@noaa.gov>
Date: Mon, Sep 18, 2017 at 9:56 AM
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To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>

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Yours,
Karen

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FOIA Liaison

NOAA's Workforce Management Office

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Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6)

lola.m.stith@noaa.gov

Lola Stith - NOAA Affiliate

From: Lola Stith - NOAA Affiliate
Sent: Monday, September 18, 2017 11:03 AM
To: Mark Graff - NOAA Federal
Subject: Re: DOJ Template Language for FALs

I know. Allison is doing alot to the public site and she has not trained me on how to navigate it properly to maintain the updates. I can reach out to her and in addition press her for training/updated permissions so I can do it for us.

Lola

On Mon, Sep 18, 2017 at 10:59 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Ugh--I liked it so much when we could just directly change this stuff.

Mark H. Graff
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Yours,
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Cc: Lola Stith - NOAA Affiliate; Robert Hogan; Robert Swisher - NOAA Federal
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lola.m.stith@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

((b)(6)

lola.m.stith@noaa.gov

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, September 18, 2017 11:04 AM
To: Allison Soussi-Tanani - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: Update of Appeal Language

Hi Allison--

We just realized the forward facing FOIA website still has the old (pre-2016 FOIA Improvement Act) appeal language on it here: <http://www.noaa.gov/foia-freedom-of-information-act>.

Can you update the language to the following?:

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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

You also may contact the NOAA FOIA Public Liaison, Robert Swisher, at (301)-625-5755.

Thanks Allison--we're still finding more and more locations where the old language was posted and relied on. I appreciate the help!

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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Pua Kamaka - NOAA Federal

From: Pua Kamaka - NOAA Federal
Sent: Thursday, August 31, 2017 7:33 PM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Re: Followup from 8/28/17

Hi Lola,

(b)(5)

thanks
pua

On Thu, Aug 31, 2017 at 1:40 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
(Copying Lola in case I'm out)

You bet--

(b)(5)

Please feel free to have her give me a call or reach out to me by email--I'd be happy to go through the analysis above with her.

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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On Wed, Aug 30, 2017 at 9:04 PM, Pua Kamaka - NOAA Federal <pua.kamaka@noaa.gov> wrote:
Can you help me with this one?

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

From: **Candace Calloway Whiting** <cmcwhiting@gmail.com>
Date: Wed, Aug 30, 2017 at 3:02 PM
Subject: Re: Followup from 8/28/17
To: Pua Kamaka - NOAA Federal <pua.kamaka@noaa.gov>

Hi Pua,

I appreciate this notice, however my understanding was that you agreed to send to me your reasons for asking me to make the request instead of through the Office of Protected Resources. I did not agree to submit a FOIA until the justification for asking this is further explained to me in writing so that I can process the information. I have waited six months and followed the procedures as required for this public database.

Please send me the recap as was agreed upon.

Sincerely,
Candace

On Wed, Aug 30, 2017 at 5:37 PM, Pua Kamaka - NOAA Federal <pua.kamaka@noaa.gov> wrote:

Aloha Candace,

Thank you for taking the time yesterday to speak to me regarding your request for data from the NMFS Marine Mammal Stranding database.

As we discussed, the NMFS Pacific Islands Regional Office will be processing your below request through the Freedom of Information Act (FOIA). Should you have any additional questions or concerns regarding the processing of your request, please contact the NOAA FOIA Officer, Mark Graff at mark.graff@noaa.gov or (301)628-5658 (O) or (b)(6) (C).

Thank you,
Pua

"For all cetaceans in the database, including those euthanized offshore and/or brought to shore:

In the region of the entire NOAA Fisheries Pacific Islands Regional area including, but not limited to: Hawaiian Archipelago, Guam, Wake Island, the Mariana Islands, Palau, Marshall Islands, Samoa, Micronesia, and Johnston, Jarvis, Palmyra, Howland, Baker Islands (all PIRAs).

From 1950 to the present:

Species,
Date of Initial Observation,
Location of Stranding,
Condition at Initial Observation,
Gender,
Age Class
Occurance details

Condition at examination
Initial live animal disposition
Condition/determination
Photos/videos taken
Tag data
Carcass status
Specimen disposition
Necropsied
Necropsied by"

--

Candace Calloway Whiting

[International Dolphin & Whale Stranding Network](#)

blog.seattlepi.com/candacemwhiting

<http://www.huffingtonpost.com/candace-calloway-whiting/>

Allison Soussi-Tanani - NOAA Federal

From: Allison Soussi-Tanani - NOAA Federal
Sent: Monday, September 18, 2017 1:17 PM
To: Mark Graff - NOAA Federal
Subject: Re: Update of Appeal Language

Updated :)

--

Allison Soussi-Tanani
Digital Strategy Lead
NOAA Office of the CIO
Service Delivery Division

- (b)(6) (m)
-- allison.soussi-tanani@noaa.gov

On Mon, Sep 18, 2017 at 11:04 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hi Allison--

We just realized the forward facing FOIA website still has the old (pre-2016 FOIA Improvement Act) appeal language on it here: <http://www.noaa.gov/foia-freedom-of-information-act>.

Can you update the language to the following?:

You have the right to appeal this [denial or partial denial]. An appeal must be received within 90 calendar days of the date of this response letter by the Assistant General Counsel for Administration (Office), Room 5898-C, U.S. Department of Commerce, 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, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>. The appeal should include a copy of the original request and initial denial, if any. The appeal should include a statement of the reasons why the Expedited Processing request should not be denied and why the adverse determination was in error. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal 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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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)

You also may contact the NOAA FOIA Public Liaison, Robert Swisher, at [301-625-5755](tel:301-625-5755).

Thanks Allison--we're still finding more and more locations where the old language was posted and relied on. I appreciate the help!

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)

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Allison Soussi-Tanani - NOAA Federal

From: Allison Soussi-Tanani - NOAA Federal
Sent: Monday, September 18, 2017 1:18 PM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: Re: Update of Appeal Language

Responding to all now - the update was made. Let me know if you have anything else.

--

Allison Soussi-Tanani
Digital Strategy Lead
NOAA Office of the CIO
Service Delivery Division

- (b)(6) (m)
-- allison.soussi-tanani@noaa.gov

On Mon, Sep 18, 2017 at 11:04 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Allison--

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Can you update the language to the following?:

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Thanks Allison--we're still finding more and more locations where the old language was posted and relied on. I appreciate the help!

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)

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Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, September 18, 2017 1:28 PM
To: Allison Soussi-Tanani - NOAA Federal
Subject: Re: Update of Appeal Language

Awesome! Holy cow that was fast--thank you!

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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On Mon, Sep 18, 2017 at 1:17 PM, Allison Soussi-Tanani - NOAA Federal <allison.soussi-tanani@noaa.gov> wrote:

Updated :)

--

Allison Soussi-Tanani
Digital Strategy Lead
NOAA Office of the CIO
Service Delivery Division

- (b)(6) (m)

-- allison.soussi-tanani@noaa.gov

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Hi Allison--

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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)

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Aida Pettegrue

From: Aida Pettegrue
Sent: Friday, September 1, 2017 12:06 PM
To: Martha McCoy - NOAA Federal
Cc: Scott Kathey - NOAA Federal; Mark Graff - NOAA Federal; Jackie Rolleri - NOAA Federal; Karen Grimmer; Stephanie Altman - NOAA Federal; Michelle Mills
Subject: Re: ONMS Interim Response to FOIA DOC-NOAA-2017-001569 (Emerson)
Attachments: Point Memo 2017-001569 Sarah Emerson.doc; FOIA 2017-001569 Partial Response Ltr. Sarah Emerson.docx

Hi Marty:

Per your request, please find attached for your review/clearance the "draft point memo" and the "draft interim response letter".

Thank you.

aida

On 8/31/2017 5:11 PM, Martha McCoy - NOAA Federal wrote:

ATTORNEY-CLIENT CONFIDENTIAL / DELIBERATIVE

All,

(b) (5)

(b) (5)

On Wed, Aug 30, 2017 at 7:08 PM, Scott Kathey - NOAA Federal <scott.kathey@noaa.gov> wrote:

Aida,

(b) (5)

(b) (5)

If you have any questions or concerns, please let me know.

Scott

Scott Kathey
Federal Regulatory Coordinator
Monterey Bay National Marine Sanctuary
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
99 Pacific Street, 455A
Monterey, California 93940
Phone: [831-647-4251](tel:831-647-4251)
Fax: [831-647-4250](tel:831-647-4250)

On Fri, Aug 11, 2017 at 2:27 PM, Scott Kathey - NOAA Federal <scott.kathey@noaa.gov>
wrote:

All,

(b) (5)

(b)(5)

Mark or Marty. I have a couple of process questions.

(b)(5)

Thanks,

Scott

Scott Kathey
Federal Regulatory Coordinator
Monterey Bay National Marine Sanctuary
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
99 Pacific Street, 455A
Monterey, California 93940
Phone: [831-647-4251](tel:831-647-4251)
Fax: [831-647-4250](tel:831-647-4250)

--

Martha McCoy

Attorney-Advisor

NOAA Office of the General Counsel, Oceans and Coasts Section

SSMC-4 /Room 6128

1305 East-West Highway

Silver Spring, MD 20910

301-713-7391

--

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(b)(5)

(b)(5)

(b)(5)

MEMORANDUM FOR: W. Russell Callender Ph.D.
Assistant Administrator

FROM: John Armor, Director
Office of National Marine Sanctuaries

POINT PAPER

SUBJECT: Freedom of Information Act Request No. 2017-001569

BACKGROUND

(b) (5)

DISCUSSION

(b) (5)

Bogomolny, Michael (Federal)

From: Bogomolny, Michael (Federal)
Sent: Monday, September 18, 2017 4:49 PM
To: Stith, Lola (Contractor); Williams, Maria (Federal); Hogan, Robert (Federal); Allison-Holman, Roxie (Federal); Graff, Mark (Federal); Toland, Michael (Federal)
Subject: FW: CBD v. DOI, No. 17-974
Attachments: First Amended Complaint.pdf; Answer to Amended Complaint.docx

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

-bogo

From: Kolsky, Joshua (USADC) [mailto:Joshua.Kolsky@usdoj.gov]
Sent: Monday, September 18, 2017 4:30 PM
To: Koernig, Kristin <Kristin.Koernig@Hq.Doe.Gov>; Lohr, Gabriel <gabriel.lohr@sol.doi.gov>; Grosso, Elizabeth <GrossoE@state.gov>; Versace, Paul <Versace.Paul@epa.gov>; Schwarz, Matthew <Schwarz.Matthew@epa.gov>; Bogomolny, Michael (Federal) <MBogomolny@doc.gov>
Subject: CBD v. DOI, No. 17-974

Attached is a draft answer to Plaintiff's amended complaint (also attached) in this case (b)(5) [Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]

Thanks,
Josh

Joshua Kolsky
Assistant United States Attorney
District of Columbia
555 Fourth St., N.W.
Washington, D.C. 20530
Phone: (202) 252-2541
Fax: (202) 252-2599
Email: joshua.kolsky@usdoj.gov

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

CENTER FOR BIOLOGICAL DIVERSITY
378 North Main Avenue
Tucson, AZ 85701,

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR
1849 C Street, NW
Washington, D.C. 20240,

U.S. ENVIRONMENTAL PROTECTION
AGENCY
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460,

U.S. DEPARTMENT OF ENERGY
1000 Independence Avenue, SW
Washington, D.C. 20585,

U.S. DEPARTMENT OF STATE
2201 C. Street, NW
Washington, D.C. 20037,

U.S. DEPARTMENT OF COMMERCE
1401 Constitution Avenue, NW
Washington, D.C. 20230,

and

U.S. NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
1315 East-West Highway
Silver Spring, MD 20910

Defendants.

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Case No.: 1:17-cv-0974 (KBJ)

INTRODUCTION

1. The Center for Biological Diversity (“Center”)—an environmental conservation organization that works to protect native wildlife species and their habitats—challenges the failure of the U.S. Department of Interior, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of State, U.S. Department of Commerce, and U.S. National Oceanic and Atmospheric Administration to provide records concerning the Trump administration’s censorship of these federal departments’ and their component agencies’ discussion or dissemination of information about climate change, in violation of the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA” or “Act”), or alternatively, the Administrative Procedure Act, 5 U.S.C. §§ 701-06 (“APA”).

2. From January through March 2017, news outlets reported that the Trump administration directed numerous federal departments and agencies to remove information from their websites about climate change and/or to cease use of phrases such as “climate change,” “emissions reduction,” or “Paris agreement” in agency documents. These departments and agencies include the six named defendants in this action.

3. To understand these actions, the Center filed FOIA requests with each of the defendants, seeking directives or communications barring or removing climate change-related words or phrases from formal communications as well as the information, such as webpages about climate change, that has been removed from public view.

4. However, although each defendant acknowledged the Center’s request, none have provided any responsive records or stated when they might do so.

5. Defendants are unlawfully withholding the records by failing to search for and provide all responsive records to the Center. The defendants’ failure to comply with FOIA by

releasing all records related to the censorship of climate change-related words and phrases is contrary to FOIA and undermines FOIA's policy of government transparency.

6. Because prompt access to these records is necessary to effectuate FOIA's purpose, the Center seeks declaratory relief establishing that defendants are in violation of FOIA, or alternatively, the APA. The Center also seeks injunctive relief directing defendants to provide responsive records without any further delay.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

8. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district, because a portion of the responsive records may be found in this district.

9. Declaratory relief is appropriate under 28 U.S.C. § 2201.

10. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit conservation organization with offices throughout the United States. The Center has more than 58,000 members. The Center and its members are harmed by EPA's violations of FOIA, or alternatively the APA, as such violations preclude the Center from gaining a full understanding of the circumstances, rationales, and individuals involved in the Trump administration's censorship of climate change-related information.

12. Defendant U.S. DEPARTMENT OF THE INTERIOR (“Interior Department”) is an independent agency of the executive branch of the U.S. government. The Interior Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13. Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY (“EPA”) is an independent agency of the executive branch of the U.S. government. EPA is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

14. Defendant U.S. DEPARTMENT OF ENERGY (“Energy Department”) is an independent agency of the executive branch of the U.S. government. The Energy Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

15. Defendant U.S. DEPARTMENT OF STATE (“State Department”) is an independent agency of the executive branch of the U.S. government. The State Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

16. Defendant U.S. DEPARTMENT OF COMMERCE (“Commerce Department”) is an independent agency of the executive branch of the U.S. government. The Commerce Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

17. Defendant U.S. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (“NOAA”) is an independent agency of the executive branch of the U.S.

government. NOAA is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

STATUTORY BACKGROUND

18. FOIA's basic purpose is government transparency. It establishes the public's right to access all federal agency records unless such records may be withheld pursuant to one of nine, narrowly construed FOIA exemptions. 5 U.S.C. § 552(b)(1)-(9).

19. FOIA imposes strict and rigorous deadlines on federal agencies when they receive a request for records pursuant to FOIA. Specifically, an agency must determine whether to disclose responsive records and notify the requester of its determination within 20 working days of receiving a FOIA request, and it must make records "promptly" available unless it can establish that certain unusual circumstances are present and/or that it may lawfully withhold records, or portions thereof, from disclosure. *Id.* § 552(a)(3)(A), (a)(6). Also within 20 working days, the agency must inform the requester that it has a right to appeal the agency's determination. *Id.* § 552(a)(6)(A)(i).

20. FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

21. Congress has specified limited circumstances in which federal agencies may obtain more time to make the determination that is required by 5 U.S.C. § 552(a)(6)(A)(i).

22. First, an agency may toll the 20-working-day deadline to seek additional information or clarification from a requester, but that tolling period ends when the agency receives such information or clarification. *Id.* § 552(a)(6)(A)(ii).

23. Second, an agency may extend the 20-working-day deadline for an additional 10 working days by giving a written notice to the requester that sets forth "unusual circumstances"

to justify a deadline extension which also requires that it provide the date by which the agency expects to make the determination. *Id.* § 552(a)(6)(B)(i). However, to invoke such “unusual circumstances,” the agency must provide the requester with “an opportunity to limit the scope of the request so that it may be processed within [20 working days] or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii). In addition, when asserting unusual circumstances, the agency “shall make available its FOIA Public Liaison” to “assist in the resolution of any disputes between the requester and the agency.” *Id.*

24. FOIA requires each agency to make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records that are responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D).

25. FOIA requires federal agencies to expeditiously disclose requested records, *see id.* § 552, and mandates a policy of broad disclosure of government records. Any inquiry under FOIA brings with it a strong presumption in favor of disclosure.

26. Congress recognized that in certain, limited instances, records may be withheld as exempt from FOIA’s broad disclosure mandate, and thus created nine categories of exemptions. *Id.* § 552(b). These exemptions, however, are narrowly construed in light of FOIA’s dominant objective of disclosure, not secrecy.

27. The U.S. district courts have jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

28. Alternatively, an agency’s response to a FOIA request and/or a FOIA appeal is subject to judicial review under the APA, which confers a right of judicial review on any person

who is adversely affected by agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is unlawfully withheld or unreasonably delayed. *Id.* § 706(1). District courts must set aside any agency action that is found to be “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” *Id.* § 706(2)(A).

FACTUAL BACKGROUND

Interior Department FOIA Request (OS-2017-00384)

29. On March 30, 2017, the Center submitted a FOIA request to the Interior Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

30. The same day, the Interior Department acknowledged the Center’s request and assigned it tracking number OS-2017-00384 (“Interior Department FOIA Request”).

31. A determination on the Center’s FOIA request to the Interior Department was due by April 27, 2017, which is 20 working days after the date of the Interior Department’s acknowledgement of the request.

32. As of the date of the filing of this amended complaint, which is 77 working days past the 20-working-day deadline, the Interior Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center’s FOIA request.

EPA FOIA Request (EPA-HQ-2017-005517)

33. On March 30, 2017, the Center submitted a FOIA request to the EPA, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

34. The same day, the EPA acknowledged the Center’s request and assigned it tracking number EPA-HQ-2017-005517 (“EPA FOIA Request”). On March 12, 2017, EPA granted a waiver of fees in connection with the request.

35. A determination on the Center’s FOIA request to the EPA was due by April 27, 2017, which is 20 working days after the date of the EPA’s acknowledgement of the request.

36. After receiving no further communications from EPA regarding this request, by letter dated May 8, 2017, the Center informed EPA that its determination was overdue and offered to assist EPA in making a determination on the Center’s EPA FOIA Request. The Center also requested an estimate for when EPA would make a determination on the Center’s FOIA request.

37. As of the date of the filing of this amended complaint, which is 77 working days past the 20-working-day deadline, EPA has not responded to the Center’s May 8, 2017 letter, requested additional time to respond to the Center’s FOIA request, provided any responsive records, made a determination, or provided an estimated date of completion of the Center’s FOIA request.

Energy Department FOIA Request (HQ-2017-00806)

38. On March 30, 2017, the Center submitted a FOIA request to the Energy Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

39. The next day, on March 31, 2017, the Energy Department acknowledged the Center’s request and assigned it tracking number HQ-2017-00806 (“Energy Department FOIA Request”).

40. On April 11, 2017, a representative of the Energy Department, Ms. Natalie Anderson, contacted Ms. Margaret E. Townsend of the Center for Biological Diversity by phone and email. Ms. Anderson stated that she wanted to clarify the timeframe for records that are responsive to the Center’s Energy Department FOIA Request. In response, Ms. Townsend informed Ms. Anderson that the Energy Department could search for and provide all responsive records that were generated on or after November 9, 2016.

41. Ms. Anderson also stated that the Energy Department had received many FOIA requests that are similar to the Center’s Energy Department FOIA Request, and in an email dated April 11, 2017, suggested that if the Center would agree to limit the department’s search to two of its program offices—specifically, the Office of International Affairs (“OIA”) and the Office of Energy Policy and Systems Analysis (“EPSA”)—this “should allow [the Energy Department] to

provide a response more quickly.” Accordingly, the Center agreed to limit the department’s search to the OIA and EPSA.

42. Also in her April 11, 2017 email, Ms. Anderson asked if the Center would agree to eliminate the phrases “including but not limited to” and “any related words or phrases” from its request, and if the Center would like to include any search terms in addition to “climate change,” “global warming,” “climate disruption,” “greenhouse gas emissions,” “emissions reductions,” and/or “Paris agreement.” In response, Ms. Townsend added the terms “climate” and “fossil fuels” to the search terms to be used by the Energy Department during its search for responsive records from the OIA and EPSA.

43. By email dated April 13, 2017, Ms. Anderson confirmed the scope of the department’s search for responsive records, stating that the department would “move forward with processing.”

44. By letter dated April 26, 2017, Energy Department FOIA Officer Alexander C. Morris confirmed the agreement of Ms. Anderson and Ms. Townsend regarding the scope of the department’s search, informed the Center that the request was assigned to OIA and EPSA, and granting the Center’s request for a waiver of fees.

45. A determination on the Center’s Energy Department FOIA Request was due on May 11, 2017, which is 20 working days after the date of Ms. Anderson’s email stating that the department was prepared to “move forward with processing.”

46. By letter dated August 11, 2017, which was 65 working days past the 20-working-day deadline, the Energy Department provided a determination in response to the Center’s FOIA request.

47. In its determination, the Energy Department stated that it possessed no responsive records.

48. News articles indicate that the Energy Department likely possesses responsive records. For example, in an article date March 29, 2017, *Politico* reported that “[a] supervisor at the Energy Department’s international climate office told staff this week not to use the phrases ‘climate change,’ ‘emissions reduction’ or ‘Paris Agreement’ in written memos, briefings or other written communication” See Eric Wolff, Energy Department climate office bans use of phrase “climate change”, *Politico* (Mar. 29, 2017), <http://www.politico.com/story/2017/03/energy-department-climate-change-phrases-banned-236655>.

49. The Center challenges the adequacy of the Energy Department’s search for responsive records and the Energy Department’s failure to provide all responsive records to the Center.

State Department FOIA Request

50. On April 3, 2017, the Center submitted a FOIA request to the State Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

51. The next day, on April 4, 2017, the State Department acknowledged the Center’s request and assigned it tracking number F-2017-08517 (“State Department FOIA Request”).

52. By form letter dated April 10, 2017, the Requester Communications Branch of the State Department's Office of Information Programs & Services re-acknowledged receipt of the Center's FOIA request, and it also granted a public interest waiver of fees that are incurred in processing the request.

53. After receiving no further communications from the State Department regarding this request, by letter dated May 31, 2017, the Center informed the State Department that its determination was overdue and offered to assist the State Department in making a determination on the Center's State Department FOIA Request. The Center also requested an estimate for when the State Department would make a determination on the Center's FOIA request.

54. By email dated June 1, 2017, Charlotte W. Duckett confirmed the State Department's receipt of the Center's May 31, 2017 communication. Ms. Duckett stated that a copy of the Center's May 31, 2017 communication "was forwarded to the office that is processing your request" and that "our office has a requested an estimated completion date for your request." Ms. Duckett did not provide an estimated date of completion of the State Department's determination on the Center's request.

55. A determination on the Center's FOIA request to the State Department was due by May 2, 2017, which is 20 working days after the date of the State Department's acknowledgement of the request.

56. As of the date of the filing of this amended complaint, which is 74 working days past the 20-working-day deadline, the State Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center's FOIA request.

Commerce Department FOIA Request (DOC-OS-2017-000939)

57. On April 3, 2017, the Center submitted a FOIA request to the Commerce Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

58. The same day, the Commerce Department acknowledged the Center’s request and assigned it tracking number DOC-OS-2017-000939 (“Commerce Department FOIA Request”). On April 10, 2017, the Commerce Department granted a waiver of fees in connection with the request.

59. On April 13, 2017, the Commerce Department sent a letter to the Center requesting clarification of (1) the time frame of the records request and (2) the type of records requested.

60. The Center provided the requested clarification to the Commerce Department via electronic mail on April 17, 2017. The Center informed the Commerce Department that “[t]he timeframe of the records request is November 9, 2016 to the date of the search,” and that

[t]he type of records requested is all records, as defined by FOIA, and included in the following paragraph from our request:

For purposes of this request, “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind including electronic as well as paper documents, e-mails, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, data bases, drawings, surveys, graphs, charts,

photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

61. On May 23, 2017, Commerce Department FOIA Specialist Ms. Ayana Crawford called Ms. Townsend to ask if the Center would respond to the agency's request for clarification before Ms. Crawford took action to close the request. Ms. Townsend informed Ms. Crawford that the Center had already provided the requested clarification on April 17, 2017. Ms. Crawford asked Ms. Townsend to resend it. Ms. Townsend resent the email clarification the same day.

62. A determination on the Center's Commerce Department FOIA Request was due on May 3, 2017, which is 20 working days after the Commerce Department received the Center's FOIA request.

63. Even if the Commerce Department had reasonably suspended its timeline for a determination on the Center's FOIA request, by relying on May 23, 2017 as the date that the Center provided clarification, then the Center's Commerce Department FOIA Request would have been due on June 9, 2017.

64. As of the date of the filing of this Amended complaint, which is 47 workdays past the June 9, 2017 deadline, the Commerce Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center's Commerce Department FOIA request.

NOAA FOIA Request (DOC-NOAA-2017-001066)

65. On April 21, 2017, the Center submitted a FOIA request to NOAA, requesting "all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-

related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

66. The same day, NOAA acknowledged the Center’s request and assigned it tracking number DOC-NOAA-2017-001066 (“NOAA FOIA Request”). On April 24, 2014, NOAA provided a formal acknowledgement letter to the Center.

67. On May 3, 2017, NOAA informed the Center that it determined that a waiver of fees in connection with the request was not applicable as the request was “not billable.”

68. On May 10, 2017, NOAA provided a final “no records” determination to the Center and informed the Center of its right to appeal the determination.

69. The Center appealed NOAA’s “no records” determination on June 30, 2017. The same day, NOAA acknowledged the Center’s appeal and assigned it tracking number DOC-OS-2017-001456 (“NOAA FOIA Appeal”)

70. NOAA affirmed its decision on the Center’s NOAA FOIA Appeal on July 3, 2017. In the letter, the agency informed the Center that “[r]ecords indicate that a search was tasked to the NOAA National Environmental Satellite Data and Information Services (NESDIS) and that a search of the NESDIS correspondence unit was performed.” NOAA stated that “it is reasonable to assume that the NESDIS correspondence unit would hold any and all documents responsive to [the Center’s] request.” NOAA also informed the Center that it has “the right to obtain judicial review as provided for in 5 U.S.C. § 552(a)(4)(8).”

71. News articles indicate that NOAA possesses responsive records. For example, in an article date July 13, 2017, the *New York Times* reported that phrasing in a NOAA news release accompanying a report about the warming ability of global emissions of greenhouse

gases omitted any link of “human activity” to emissions. *See* Lisa Friedman, Climate-Altering Gases Spiked in 2016, Federal Scientists Report, NY Times (July 13, 2017), <https://www.nytimes.com/2017/07/13/climate/greenhouse-gases-spike-noaa-global-warming.html>.

72. The Center challenges the adequacy of NOAA’s search for responsive records and NOAA’s failure to provide all responsive records to the Center.

All Requests

73. None of FOIA’s nine exemptions to the statute’s disclosure mandate apply to the records that are responsive to any of the Center’s FOIA requests. *Id.* § 552(b).

74. The Center has been required to expend resources to prosecute this action.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **VIOLATION OF THE FREEDOM OF INFORMATION ACT** **Failure to Comply with FOIA’s Mandatory Determination Deadline**

COUNT ONE: The Interior Department Missed FOIA’s Mandatory Determination Deadline for the Center’s Interior Department FOIA Request Number OS-2017-00384

75. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

76. The Interior Department has violated FOIA by refusing to disclose records that are responsive to the Center’s Interior Department FOIA Request Number OS-2017-00384.

77. The Center has a statutory right to a final determination from the Interior Department on FOIA Request Number OS-2017-00384 in a manner that complies with FOIA. The Interior Department has violated the Center’s rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

78. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

79. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's disclosure provisions as it has in this case.

80. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, the Interior Department will continue to violate Plaintiff's rights to receive public records under FOIA.

COUNT TWO: EPA Missed FOIA's Mandatory Determination Deadline for the Center's EPA FOIA Request Number EPA-HQ-2017-005517

81. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

82. EPA has violated FOIA by refusing to disclose records that are responsive to the Center's EPA FOIA Request Number EPA-HQ-2017-005517.

83. The Center has a statutory right to a final determination from EPA on its EPA FOIA Request Number EPA-HQ-2017-005517 in a manner that complies with FOIA. EPA has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

84. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's decision deadlines as it has in this case.

85. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Missed FOIA's Mandatory Determination Deadline for the Center's Energy Department FOIA Request Number EPA-HQ-2017-005517

86. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

87. The Energy Department has violated FOIA by refusing to disclose records that are responsive to the Center's Energy Department FOIA Request Number HQ-2017-00806.

88. The Center has a statutory right to a final determination from the Energy Department on its Energy Department FOIA Request Number HQ-2017-00806 in a manner that complies with FOIA. The Energy Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

89. The Center's organizational activities will be adversely affected if the Energy Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

90. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Missed FOIA's Mandatory Determination Deadline for the Center's State Department FOIA Request Number F-2017-08517

91. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

92. The State Department has violated FOIA by refusing to disclose records that are responsive to the Center's State Department FOIA Request Number F-2017-08517.

93. The Center has a statutory right to a final determination from the State Department on its State Department FOIA Request Number F-2017-08517 in a manner that

complies with FOIA. The State Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

94. The Center's organizational activities will be adversely affected if the State Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

95. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Missed FOIA's Mandatory Determination Deadline for the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

96. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

97. The Commerce Department has violated FOIA by refusing to disclose records that are responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939.

98. The Center has a statutory right to a final determination from the Commerce Department on its Commerce Department FOIA Request Number DOC-OS-2017-000939 in a manner that complies with FOIA. The Commerce Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

99. The Center's organizational activities will be adversely affected if the Commerce Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

100. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Disclose All Responsive Records to the Center

COUNT ONE: The Interior Department Has Unlawfully Withheld Records Responsive to Interior Department FOIA Request Number OS-2017-00384

101. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

102. The Center has a statutory right to the records it seeks, and there is no legal basis for the Interior Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

103. The Interior Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Interior Department FOIA Request Number OS-2017-00384.

104. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Interior Department in the foreseeable future.

105. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's disclosure provisions as it has in this case.

106. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Has Unlawfully Withheld Records Responsive to EPA FOIA Request Number EPA-HQ-2017-005517

107. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

108. The Center has a statutory right to the records it seeks, and there is no legal basis for EPA to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

109. EPA has violated the Center's rights in this regard by withholding records that are responsive to the Center's EPA FOIA Request Number EPA-HQ-2017-005517.

110. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to EPA in the foreseeable future.

111. The Center's organizational activities will be adversely affected if EPA continues to violate FOIA's disclosure provisions as it has in this case.

112. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Has Unlawfully Withheld Records Responsive to Energy Department FOIA Request Number HQ-2017-00806

113. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

114. The Center has a statutory right to the records it seeks, and there is no legal basis for the Energy Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

115. The Energy Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Energy Department FOIA Request Number HQ-2017-00806.

116. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Energy Department in the foreseeable future.

117. The Center's organizational activities will be adversely affected if the Energy Department continues to violate FOIA's disclosure provisions as it has in this case.

118. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Has Unlawfully Withheld Records Responsive to The State Department FOIA Request Number F-2017-08517

119. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

120. The Center has a statutory right to the records it seeks, and there is no legal basis for the State Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

121. The State Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's State Department FOIA Request Number F-2017-08517.

122. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the State Department in the foreseeable future.

123. The Center's organizational activities will be adversely affected if the State Department continues to violate FOIA's disclosure provisions as it has in this case.

124. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Has Unlawfully Withheld Records Responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

125. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

126. The Center has a statutory right to the records it seeks, and there is no legal basis for the Commerce Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

127. The Commerce Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939.

128. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Commerce Department in the foreseeable future.

129. The Center's organizational activities will be adversely affected if the Commerce Department continues to violate FOIA's disclosure provisions as it has in this case.

130. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's Commerce Department FOIA Request Number DOC-NOAA-2017-001066

131. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

132. The Center has a statutory right to the records it seeks, and there is no legal basis for NOAA to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

133. NOAA has violated the Center's rights in this regard by withholding records that are responsive to the Center's NOAA FOIA Request Number DOC- NOAA-2017-001066.

134. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to NOAA in the foreseeable future.

135. The Center's organizational activities will be adversely affected if NOAA continues to violate FOIA's disclosure provisions as it has in this case.

136. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Conduct an Adequate Search for Responsive Records

COUNT ONE: The Interior Department Has Failed to Conduct an Adequate Search for All Records Responsive to Interior Department FOIA Request Number OS-2017-00384

137. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

138. The Center has a statutory right to have the Interior Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Interior Department

violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384.

139. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

140. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

141. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Has Failed to Conduct an Adequate Search for All Records Responsive to EPA FOIA Request Number EPA-HQ-2017-005517

142. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

143. The Center has a statutory right to have EPA process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). EPA violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517.

144. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

145. The Center's organizational activities will be adversely affected if EPA continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

146. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Has Failed to Conduct an Adequate Search for All Records Responsive to Energy Department FOIA Request Number HQ-2017-00806

147. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

148. The Center has a statutory right to have the Energy Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Energy Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number HQ-2017-00806.

149. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Energy Department in the foreseeable future.

150. The Center's organizational activities will be adversely affected if the Energy Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

151. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Has Failed to Conduct an Adequate Search for All Records Responsive to State Department FOIA Request Number F-2017-08517

152. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

153. The Center has a statutory right to have the State Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The State Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517.

154. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the State Department in the foreseeable future.

155. The Center's organizational activities will be adversely affected if the State Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

156. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

157. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

158. The Center has a statutory right to have the Commerce Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Commerce

Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939.

159. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Commerce Department in the foreseeable future.

160. The Center's organizational activities will be adversely affected if the Commerce Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

161. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's NOAA FOIA Request Number DOC-NOAA-2017-001066

162. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

163. The Center has a statutory right to have NOAA process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). NOAA violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066.

164. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to NOAA in the foreseeable future.

165. The Center's organizational activities will be adversely affected if NOAA continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

166. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

FOURTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records

COUNT ONE: The Interior Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

167. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

168. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

169. The Interior Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Interior Department FOIA Request Number OS-2017-00384.

170. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

171. The Center's organizational activities will be adversely affected if the Interior Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

172. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

173. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

174. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

175. EPA violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517.

176. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

177. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's disclosure provisions as it has in this case.

178. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

179. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

180. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

181. The Energy Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Energy Department FOIA Request Number HQ-2017-00806.

182. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Energy Department in the foreseeable future.

183. The Center's organizational activities will be adversely affected if the Energy Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

184. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

185. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

186. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

187. The State Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to State Department FOIA Request Number F-2017-08517.

188. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the State Department in the foreseeable future.

189. The Center's organizational activities will be adversely affected if the State Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

190. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

191. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

192. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

193. The Commerce Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939.

194. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Commerce Department in the foreseeable future.

195. The Center's organizational activities will be adversely affected if the Commerce Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

196. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

197. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

198. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

199. NOAA violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066.

200. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to NOAA in the foreseeable future.

201. The Center's organizational activities will be adversely affected if NOAA is allowed to continue violating FOIA's disclosure provisions as it has in this case.

202. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Fourth Claims)
Unlawfully Withheld or Unreasonably Delayed Actions that FOIA Requires

COUNT ONE: The Interior Department Withheld or Unreasonably Delayed Actions that FOIA Requires

203. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

204. The Interior Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose

records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (2) make a timely and lawful determination on Interior Department FOIA Request Number OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all responsive records to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to Interior Department FOIA Request Number OS-2017-00384 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Interior Department FOIA Request Number OS-2017-00384 in the event that records may be subject to an exemption. The Interior Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

205. Alternatively, the Interior Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (2) make a timely and lawful determination on to Interior Department FOIA Request Number OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to OS-2017-00384 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Interior Department FOIA Request Number OS-2017-00384 which contain any material that may be lawfully withheld under an exemption(s). The Interior Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

206. As alleged above, the Interior Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

207. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

208. The Center has no other adequate remedy at law to redress the violations noted above.

209. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT TWO: EPA Withheld or Unreasonably Delayed Actions that FOIA Requires

210. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

211. EPA unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all responsive records to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to EPA FOIA Request Number EPA-HQ-2017-005517 in the event that records may be subject to an exemption. EPA's failures constitute agency actions that are

unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

212. Alternatively, EPA unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which contain any material that may be lawfully withheld under an exemption(s). EPA's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

213. As alleged above, EPA's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

214. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, EPA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

215. The Center has no other adequate remedy at law to redress the violations noted above.

216. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT THREE: The Energy Department Withheld or Unreasonably Delayed Actions that FOIA Requires

217. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

218. The Energy Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all responsive records to Energy Department FOIA Request Number HQ-2017-00806; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Energy Department FOIA Request Number HQ-2017-00806 in the event that records may be subject to an exemption. The Energy Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

219. Alternatively, the Energy Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions

to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Energy Department FOIA Request Number HQ-2017-00806 which contain any material that may be lawfully withheld under an exemption(s). The Energy Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

220. As alleged above, the Energy Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

221. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, the Energy Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

222. The Center has no other adequate remedy at law to redress the violations noted above.

223. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FOUR: The State Department Withheld or Unreasonably Delayed Actions that FOIA Requires

224. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

225. The State Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to State Department FOIA Request Number F-2017-08517; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all responsive records to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are

responsive to State Department FOIA Request Number F-2017-08517 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to State Department FOIA Request Number F-2017-08517 in the event that records may be subject to an exemption. The State Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

226. Alternatively, the State Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to F-2017-085177; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are responsive to State Department FOIA Request Number F-2017-08517 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to State Department FOIA Request Number F-2017-08517 which contain any material that may be lawfully withheld under an exemption(s). The State Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

227. As alleged above, the State Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

228. The Center has suffered a legal wrong as a result of the State Department's failure to comply with the mandates of FOIA. As alleged above, the State Department violated its

statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

229. The Center has no other adequate remedy at law to redress the violations noted above.

230. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FIVE: The Commerce Department Withheld or Unreasonably Delayed Actions that FOIA Requires

231. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

232. The Commerce Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all responsive records to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Commerce Department FOIA Request Number DOC-OS-2017-000939 in the event that records may be subject to an exemption. The Commerce Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

233. Alternatively, the Commerce Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search

for and disclose records that are responsive to DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which contain any material that may be lawfully withheld under an exemption(s). The Commerce Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

234. As alleged above, the Commerce Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

235. The Center has suffered a legal wrong as a result of the Commerce Department's failure to comply with the mandates of FOIA. As alleged above, the Commerce Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

236. The Center has no other adequate remedy at law to redress the violations noted above.

237. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT SIX: NOAA Withheld or Unreasonably Delayed Actions that FOIA Requires

238. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

239. NOAA unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). NOAA's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

240. Alternatively, NOAA unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). NOAA's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

241. As alleged above, NOAA's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

242. The Center has suffered a legal wrong as a result of NOAA's failure to comply with the mandates of FOIA. As alleged above, NOAA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

243. The Center has no other adequate remedy at law to redress the violations noted above.

244. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

SIXTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Eighth Claims)
Violations of FOIA's Requirements Are Arbitrary, Capricious,
an Abuse of Discretion, or Otherwise Not in Accordance with Law

COUNT ONE: The Interior Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

245. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

246. The Interior Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to OS-2017-00384; (2) make a timely and lawful determination on OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to Interior Department FOIA Request Number OS-2017-00384 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Interior Department FOIA Request

Number OS-2017-00384 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Interior Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

247. As alleged above, the Interior Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

248. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

249. The Center has no other adequate remedy at law to redress the violations noted above.

250. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT TWO: EPA's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

251. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

252. EPA violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which may

not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, EPA's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

253. As alleged above, EPA's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

254. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, EPA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

255. The Center has no other adequate remedy at law to redress the violations noted above.

256. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT THREE: The Energy Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

257. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

258. The Energy Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number

HQ-2017-00806s; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Energy Department FOIA Request Number HQ-2017-00806 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Energy Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

259. As alleged above, the Energy Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

260. The Center has suffered a legal wrong as a result of the Energy Department's failure to comply with the mandates of FOIA. As alleged above, the Energy Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

261. The Center has no other adequate remedy at law to redress the violations noted above.

262. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FOUR: The State Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

263. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

264. The State Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to State Department FOIA

Request Number F-2017-08517; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are responsive to State Department FOIA Request Number F-2017-08517 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to State Department FOIA Request Number F-2017-08517 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the State Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

265. As alleged above, the State Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

266. The Center has suffered a legal wrong as a result of the State Department's failure to comply with the mandates of FOIA. As alleged above, the State Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

267. The Center has no other adequate remedy at law to redress the violations noted above.

268. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FIVE: The Commerce Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

269. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

270. The Commerce Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number DOC-OS-2017-000939; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Commerce Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

271. As alleged above, the Commerce Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

272. The Center has suffered a legal wrong as a result of the Commerce Department's failure to comply with the mandates of FOIA. As alleged above, the Commerce Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

273. The Center has no other adequate remedy at law to redress the violations noted above.

274. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT SIX: NOAA's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

275. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

276. NOAA violated FOIA's statutory mandates due to its failure and refusal to (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, NOAA's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

277. As alleged above, NOAA's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

278. The Center has suffered a legal wrong as a result of NOAA's failure to comply with the mandates of FOIA. As alleged above, NOAA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

279. The Center has no other adequate remedy at law to redress the violations noted above.

280. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Plaintiff's FOIA Requests, numbers OS-2017-00384, EPA-HQ-2017-005517, HQ-2017-00806, F-2017-08517, DOC-OS-2017-000939, and DOC-NOAA-2017-001066 with the cut-off date for such searches being the date the searches are conducted, and to provide Plaintiff, by a date certain, with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action.

2. Declare that Defendants' failures to timely make determinations on Plaintiff's FOIA Requests are unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i), or in the alternative, are an agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

3. Declare that Defendants' failures to properly apply FOIA exemptions, 5 U.S.C. § 552(b), are unlawful under FOIA, or in the alternative, are an agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

4. Declare that Defendants' failures to undertake a search for and disclose to Plaintiff all records that are responsive to Plaintiff's FOIA Requests, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i), or in the alternative, are an agency action that

has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

5. Declare that Defendants' failures to provide Plaintiff with reasonably segregable portions of records which may be lawfully subject to a FOIA exemption, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(7)(b), or in the alternative, are agency actions that have been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

6. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.

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

DATED: August 16, 2017

Respectfully submitted,

/s/ Margaret E. Townsend

Margaret E. Townsend (D.C. Bar No OR0008)
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/s/ Amy R. Atwood

Amy R. Atwood (D.C. Bar No. 470258)
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Attorneys for Plaintiff

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, September 18, 2017 5:08 PM
To: Lauren Bregman - NOAA Federal
Cc: Stacey Nathanson - NOAA Federal; Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Re: Monday, September 25th EO FOIA Training
Attachments: NOAA FOIA Quick Reference_POCs (8-1-17).pdf; NOAA FOIA Quick Reference_SMEs (8-1-17).pdf; MNM ONMS FOIA Processing 9.25.pptx

(looping in Rob and Lola)

Hi Lauren--

That'd be great, I look forward to providing the training. Do you have a preference on presentation (Q&A at the start versus the end or breaking up the training for GC plugs on problem areas?)

Here are the docs I think might work well--please let me know if you need more, less, or a deeper dive into a specific topic. These topics are easy to expound on or shrink as needed. Attached are "quick reference" guides for both SMEs and FOIA professionals, as well as the on-point training slides I cobbled together from a couple other FOIA overviews from before.

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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On Mon, Sep 18, 2017 at 4:51 PM, Lauren Bregman - NOAA Federal <lauren.bregman@noaa.gov> wrote:
Hi Mark,

Thanks for agreeing to provide a 30/45-minute training to our EO FOIA leads next Monday at 4 PM. As we just discussed, it would be great if you could provide an overview of the FOIA process and the relevant FOIA exemptions. Additionally, if you have slides and take-away handouts you could share, that would be great.

Assuming it's OK with you, we will be recording the presentation for folks who are unable to join the call.

Stacey, am I missing anything?

Thanks,
Lauren

--

Lauren Bregman
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Oceans and Coasts Section
NOAA, Office of General Counsel
1305 East-West Highway
SSMC-4, Room 6116
Silver Spring, MD 20910
Tel: [\(301\) 713-7389](tel:3017137389)
Cel: (b)(6)

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FOIA QUICK REFERENCE GUIDE FOR FOIA ACTION OFFICE POINTS OF CONTACT



The information provided below is a list of quick and easy steps that FOIA Action Office Points of Contact (POCs) should take when they receive a FOIA request. NOAA Administrative Order NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you receive a FOIA Request:

1. Review the FOIA Request and discuss any issues of scope, clarity of request, or the description of records sought with the FOIA Liaison.
2. You are responsible for:
 - ____ Step 1: Sending the subject matter experts (SMEs) a copy of the request and Search Log to complete.
 - ____ Step 2: Consulting with the SMEs to estimate search and review time, and estimated charges in the Fee Worksheet.
 - ____ Step 3: Sending an Acknowledgement Letter to the requester (this can include a fee estimate if known at the time). Sending a Fee Estimate Letter to the requester (after consulting with the Liaison) if not included in the Acknowledgement Letter.
 - ____ Step 4: Ensuring the SMEs understand the request, search for responsive documents, and appropriately identify exemptions and Personally Identifiable Information. . Exemption 4 protects confidential/proprietary information, including copyrighted material. Exemption 5 protects privileged information. Exemption 6 protects Personally Identifiable Information (PII) (note: use Exemption 7(C) to protect PII in Office of Law Enforcement docs)..If you think another exemption may apply, consult with your FOIA Coordinator or FOIA Liaison on applicability.
 - ____ Step 5: Prepare Interim Release Letters and/or Final Action Letter after receiving clearance from General Counsel (GC). Note: Clearance from the Line Office Assistant Administrator is needed for denials or partial denials.
 - ____ Step 6: Coordinate with the FOIA Liaison to ensure responsive records are correctly uploaded to FOIA Online.
3. Process the request within the allotted time specified for your response. Send Final Action Letter once all required steps have been completed.

If you have any questions, please contact the FOIA Liaison or the FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



FOIA QUICK REFERENCE GUIDE FOR SUBJECT MATTER EXPERTS

The information provided below is a list of quick and easy steps that subject matter experts should take when they receive a FOIA request. NOAA Administrative Order NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you receive a FOIA Request:

1. Review the FOIA Request and discuss any issues of scope, clarity of request, or the description of records sought with your FOIA Action Office Point of Contact (POC) or the FOIA Liaison.
2. Follow the steps listed:
 - ____ Step 1: Make sure you clearly understand what records the requester is seeking.
 - ____ Step 2: Determine if you are likely to have records responsive to the request.
 - ____ Step 3: Provide an estimate of search and review time. You may also need to estimate the number of pages of responsive documents to your POC and the FOIA Liaison.
 - ____ Step 4: Search for records responsive to the request once fees are resolved (usually through payment or a fee waiver).
 - ____ Step 5: Determine if records are to be released or withheld from the requester. Exemption 4 protects confidential/proprietary information, including copyrighted material. Exemption 5 protects privileged information. Exemption 6 protects Personally Identifiable Information (PII) (note: use Exemption 7(C) to protect PII in Office of Law Enforcement docs). If you think another exemption may apply, consult with your FOIA Coordinator or FOIA Liaison on applicability.
 - ____ Step 6: Redact the information (but do not "Apply" the redactions) that should be withheld. Complete the Search Log indicating how you conducted the search (e.g., search terms, where you searched).
 - ____ Step 7: Organize the records responsive to the request and submit them to your POC or the FOIA Liaison.
3. Process the request within the allotted time specified for your response.

If you have any questions, please contact the FOIA Liaison or the FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, September 5, 2017 9:49 AM
To: Rod.Vieira (NOAA GC)
Cc: Stacey Nathanson
Subject: Re: FOIA Tips for Managers?
Attachments: NOAA-foia-quick-and-easy-for-smes_jr final.docx; NOS FOIA Processing_jr.pptx

Hi Rod--

Here's what I've got prepared on each point, but I can flesh out more of this if you'd like.

- As to tips for managers, most have found it most helpful to pass out the "Quick and Easy Guide" and require their SME's to check each step off as the request progresses. If put into a Google Doc, case by case, it allows passive oversight by management to view the progress of each request as the SME marshalls the case to conclusion. If the steps aren't being completed, they can see which cases are lingering.
- The main pitfalls we consistently see are (1) recognizing the type of tasking being issued (2) knowing what to do with records that didn't originate with NOAA and (3) how to properly apply Exemption (b) (5). These were the issues NOS kept having, so they asked for a training specifically on these problem issues last month. I'm attaching that training, which addresses those problems on slides pp 16-32.
- Training seems to build awareness just so they know what each of the different taskings are and how to recognize them, what different agency equities require which kind of referral/consultation treatment, and knowing the parameters of (b)(5). Feel free to cannibalize this training for anyone you think it would be helpful for, and if you'd like me to come give a training to any group, just let me know.
- Most recent issues:
 1. Peer review material was affirmed as protected under (b)(5) Deliberative Process Privilege in the *JW v. DOC* case. We may want to message this so people know (1) the extent of that privilege as recognized by DDC and (2) how to avoid inadvertently waiving that privilege.
 2. Folks are still coming to grips with the impact of the 2016 FOIA Improvement Act changes. Namely (1) the restriction on fees being assessed once the case is backlogged and (2) the need for foreseeable harm for all uses of (b)(5) Deliberative Process.
 3. Here is the new fee structure incorporated into DOC's regs and the DOC FOIA Guide is listed below, effective last week. No longer a need to estimate and bill fees based on the actual salary of the individual. Averaged fees based on their position can now be used, which should significantly speed up the "fee estimate" process:

Type	Grade	Hourly Rate
Administrative	E-9/GS-8 and below	\$28
Professional	Contractor/O-1 to O-6/W-1 to W-5/GS-9 to GS-15	\$56
Executive	O-7 and above and Senior Executive Service	\$128

Mark H. Graff
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On Sun, Sep 3, 2017 at 9:37 PM, Rod.Vieira (NOAA GC) <rod.vieira@noaa.gov> wrote:

Hi Mark and Stacey,

Hope you both are having a great long weekend! I'm giving a presentation on FOIA process within NOAA GC to the GC managers next week (Wed 9/6) and I was wondering if you had any tips to share along the following lines:

- FOIA training/practical tips for managers
- What are the pitfalls that the FOIA Officer or GC FOIA experts commonly see?
- How can managers take steps to avoid those?
- Recent developments in FOIA managers should be aware of

I know that this is rather last minute, so anything you can provide would be much appreciated (recycled powerpoint slides or just a bulleted list would be perfectly great). Thank you!

-Rod



FOIA QUICK REFERENCE GUIDE FOR SUBJECT MATTER EXPERTS

The information provided below is a list of quick and easy steps that subject matter experts should take when they receive a FOIA request. NOAA Administrative Order NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you receive a FOIA Request:

1. Review the FOIA Request and discuss any issues of scope, clarity of request, or the description of records sought with your FOIA Point of Contact (POC) or the NOS FOIA Liaison.
2. Follow the steps listed:
 - ____ Step 1: Make sure you clearly understand what records the requester is seeking.
 - ____ Step 2: Determine if you are likely to have records responsive to the request.
 - ____ Step 3: Provide an estimate of search and review time. You may also need to estimate the number of pages of responsive documents to your POC and the FOIA Liaison.
 - ____ Step 4: Search for records responsive to the request once fees are resolved (usually through payment or a fee waiver).
 - ____ Step 5: Determine if records are to be released or withheld from the requester. Exemption 4 protects confidential/proprietary information, including copyrighted material. Exemption 5 protects privileged information. Exemption 6 protects Personally Identifiable Information (PII) (note: use Exemption 7(C) to protect PII in Office of Law Enforcement docs).. If you think another exemption may apply, consult with your FOIA Coordinator or FOIA Liaison on applicability.
 - ____ Step 6: Redact the information (but do not "Apply" the redactions) that should be withheld. Complete the Search Log indicating how you conducted the search (e.g., search terms, where you searched).
 - ____ Step 7: Organize the records responsive to the request and submit them to your POC or the NOS FOIA Liaison.
3. Process the request within the allotted time specified for your response.

If you have any questions, please contact the NOS FOIA Liaison or the FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



NOS FOIA Processing

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief Privacy
Officer

Office of the Chief Information Officer
Governance and Portfolio Division
mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Birth to Death Processing Flow
2. Regulatory Structure for Referrals
3. The Risks of Other Agency Docs
4. DOJ Office of Information Policy Guidance
5. Deliberative Process Privilege
 - a) (b)(5) Two-Prong Test
 - b) Extent of the Privilege
6. Questions



Birth to Death Processing Flow



Receipt and Perfection

1. A request can be submitted in almost any fashion, to any employee. If it has been misdirected, that employee has 10 working days to properly route the request before the 20-day clock begins.
2. A request is perfected when it reasonably describes the records being sought so a search can commence, and is not unduly burdensome.



Birth to Death Processing Flow



Fees and Expedited Processing

1. If a requester wants a waiver of fees, they have to satisfy 6 factors, outlined in 15 CFR 4.11(l).
2. If a requester wants Expedited Processing, they must satisfy 15 CFR 4.6(d)(2).
3. When either of these are requested, they will be adjudicated by the FOIA Officer prior to tasking the LO with a search. If this adjudication occurs after tasking to the LO, the LO should coordinate with the FOIA Officer, as this usually indicates a high-risk request.



Birth to Death Processing Flow



Fees and Expedited Processing (cont'd)

1. If a fee waiver is not granted, the LO will be tasked with estimating the fees.
2. If the estimated fee is greater than \$20, the liaison should send a fee estimate to the requester and toll the processing of the request.*

*This is the suggested time under the regulations to discuss narrowing the scope with the requester.



Birth to Death Processing Flow



Search and Processing

1. Once the fees are resolved—either through a fee waiver, payment of fees, or unassessed fees becoming non-billable by the request becoming backlogged, a search is required.
2. The search should be in all locations where responsive records are reasonably likely to be found.



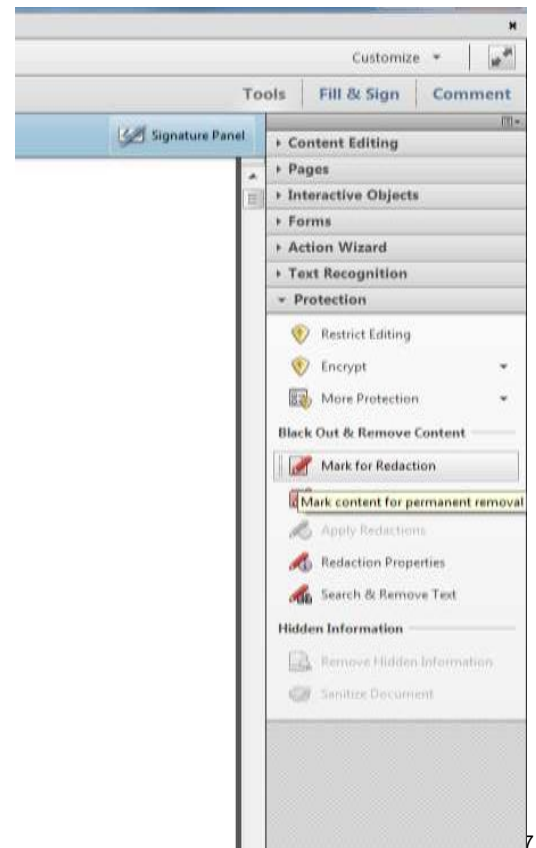
Birth to Death Processing Flow



Search and Processing

1. Once all responsive records are located, and de-duplicated*, the records need to be processed and have all exempt information redacted. This is also called “reasonable segregation”.
2. This can be done through Adobe or Clearwell.

*This can be either by hand, or through Clearwell for voluminous record searches.





Birth to Death Processing Flow



Search and Processing

1. After the records are redacted, provide the redacted copy to the FOIA Liaison.
2. Please make sure to note whether there is any particularly sensitive information, whether your search and processing is complete, or whether this is only an interim release. A completed search tasker needs to accompany the redacted records.



Birth to Death Processing Flow



Approving Release of Records

1. After the processed records are provided to the liaison, they will upload the records into FOIAOnline, and seek GC review (if necessary).
2. A review tasking will then be generated by the liaison for release of the records.



Birth to Death Processing Flow



Releasing Records

1. After the final review is complete, a tasking is generated from NOAA FOIA for the LO to release the records through FOIAOnline.

The screenshot displays the FOIAOnline interface for attaching records or past correspondence. It shows a list of 58 items found, with 51 to 58 displayed. The table below lists several items with 'Select' buttons and their corresponding types.

Send?	Title	Type	Record Release Type
Select	<i>SWD_Tasker_DOC-NOAA-2015-001860.pdf</i>	Correspondence	
Select	<i>ScopeClarification_RE_DOC-NOAA-2015-001860.pdf</i>	Correspondence	
Select	<i>Search Log_DOC-NOAA-2015-001860.pdf</i>	Correspondence	
Select	<i>Tasker.PDF</i>	Correspondence	
Select	<i>Tasker 2015-001860_Signed.pdf</i>	Correspondence	
Select	<i>ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf</i>	Correspondence	
Select	<i>ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf</i>	Correspondence	
Select	<i>Updated_Combined102 Responsive Records.Pw1L_Redacted</i>	Record	RR

58 items found, displaying 51 to 58.

Selected Items To Be Sent To Requester
No records or correspondence have been selected.

SEND CANCEL

Help Desk (8:00 am - 6:00 pm ET, M-F) | Toll-Free: (844) 238-7744 | Local: (970) 494-5506 | Email Support



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
 - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.



Regulatory Structure (Cont'd)



CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.





Consultations Continued...



Consultations can be done within FOIAOnline by uploading the record requiring consultation and then selecting the **“Create Consultation”** button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes ***unusual circumstances*** and allows you to invoke a 10 day extension.



Regulatory Structure (Cont'd)



REFERRALS:

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.





OIP Referral Guidance



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.



The Risks of Other Agency Docs



2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.



The Risks of Other Agency Docs (Cont'd)



3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.



The Risks of Other Agency Docs (Cont'd)



-
4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council Records found within our Control



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

Example: DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.

The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.



NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal



OIP GUIDANCE



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the "proper party defendant," but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

Plain English: DOJ won't challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.



(b)(5) Two Prong Test



When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



- Deliberative Process Privilege includes:
 - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
 - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
 - Seeking benefit at the expense of other applicants?
 - If yes, no (b)(5) protection.



(b)(5) Two Prong Test (cont'd)



Two Part Test:

- 1) Is the material pre-decisional?
 - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?



The Extent of the Privilege



- **Policy behind DPP:**
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a **Risk of Harm** must exist for the Privilege to apply.
- Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.





Risk of Harm



Foreseeable Harm is now a requirement under the 2016 FOIA Improvement Act:

To Reach Foreseeable Harm, OIP summarizes the considerations:

- How sensitive is the decision?
- How sensitive is the decision-making process? (consider peer review)
- Is the decision final yet?
- Would disclosure affect the employees that contributed to the records?
- Would future decisions be jeopardized if the records were released?
- How significant would the “chilling” effect be?
- How old is the record?
- How sensitive are portions of the record?



The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process.
- After that time—the privilege no longer applies.





Questions



QUESTIONS?

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, September 18, 2017 5:25 PM
To: Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate
Cc: Dennis Morgan - NOAA Federal
Subject: Fwd: Monday, September 25th EO FOIA Training
Attachments: NOAA FOIA Quick Reference_POCs (8-1-17).pdf; NOAA FOIA Quick Reference_SMEs (8-1-17).pdf; MNM ONMS FOIA Processing 9.25.pptx

Just as an FYI, ONMS (with National Monuments) has been getting slammed with FOIAs. So their GC (Lauren Bregman) asked NOAA FOIA to come and give their folks a personalized overview so their regional staff learn the background basics of FOIA. I agreed to present for them next Monday at 4:00 by WebEx, in case either of you wanted to join in the discussion.

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

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Mon, Sep 18, 2017 at 5:08 PM
Subject: Re: Monday, September 25th EO FOIA Training
To: Lauren Bregman - NOAA Federal <lauren.bregman@noaa.gov>
Cc: Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

(looping in Rob and Lola)

Hi Lauren--

That'd be great, I look forward to providing the training. Do you have a preference on presentation (Q&A at the start versus the end or breaking up the training for GC plugs on problem areas?)

Here are the docs I think might work well--please let me know if you need more, less, or a deeper dive into a specific topic. These topics are easy to expound on or shrink as needed. Attached are "quick reference" guides for both SMEs and FOIA professionals, as well as the on-point training slides I cobbled together from a couple other FOIA overviews from before.

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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On Mon, Sep 18, 2017 at 4:51 PM, Lauren Bregman - NOAA Federal <lauren.bregman@noaa.gov> wrote:

Hi Mark,

Thanks for agreeing to provide a 30/45-minute training to our EO FOIA leads next Monday at 4 PM. As we just discussed, it would be great if you could provide an overview of the FOIA process and the relevant FOIA exemptions. Additionally, if you have slides and take-away handouts you could share, that would be great.

Assuming it's OK with you, we will be recording the presentation for folks who are unable to join the call.

Stacey, am I missing anything?

Thanks,
Lauren

--

Lauren Bregman
Attorney-Advisor
Oceans and Coasts Section
NOAA, Office of General Counsel
1305 East-West Highway
SSMC-4, Room 6116
Silver Spring, MD 20910
Tel: [\(301\) 713-7389](tel:3017137389)
Cel (b)(6)

--

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FOIA QUICK REFERENCE GUIDE FOR FOIA ACTION OFFICE POINTS OF CONTACT



The information provided below is a list of quick and easy steps that FOIA Action Office Points of Contact (POCs) should take when they receive a FOIA request. NOAA Administrative Order NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you receive a FOIA Request:

1. Review the FOIA Request and discuss any issues of scope, clarity of request, or the description of records sought with the FOIA Liaison.
2. You are responsible for:
 - ____ Step 1: Sending the subject matter experts (SMEs) a copy of the request and Search Log to complete.
 - ____ Step 2: Consulting with the SMEs to estimate search and review time, and estimated charges in the Fee Worksheet.
 - ____ Step 3: Sending an Acknowledgement Letter to the requester (this can include a fee estimate if known at the time). Sending a Fee Estimate Letter to the requester (after consulting with the Liaison) if not included in the Acknowledgement Letter.
 - ____ Step 4: Ensuring the SMEs understand the request, search for responsive documents, and appropriately identify exemptions and Personally Identifiable Information. . Exemption 4 protects confidential/proprietary information, including copyrighted material. Exemption 5 protects privileged information. Exemption 6 protects Personally Identifiable Information (PII) (note: use Exemption 7(C) to protect PII in Office of Law Enforcement docs)..If you think another exemption may apply, consult with your FOIA Coordinator or FOIA Liaison on applicability.
 - ____ Step 5: Prepare Interim Release Letters and/or Final Action Letter after receiving clearance from General Counsel (GC). Note: Clearance from the Line Office Assistant Administrator is needed for denials or partial denials.
 - ____ Step 6: Coordinate with the FOIA Liaison to ensure responsive records are correctly uploaded to FOIA Online.
3. Process the request within the allotted time specified for your response. Send Final Action Letter once all required steps have been completed.

If you have any questions, please contact the FOIA Liaison or the FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



FOIA QUICK REFERENCE GUIDE FOR SUBJECT MATTER EXPERTS

The information provided below is a list of quick and easy steps that subject matter experts should take when they receive a FOIA request. NOAA Administrative Order NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you receive a FOIA Request:

1. Review the FOIA Request and discuss any issues of scope, clarity of request, or the description of records sought with your FOIA Action Office Point of Contact (POC) or the FOIA Liaison.
2. Follow the steps listed:
 - ____ Step 1: Make sure you clearly understand what records the requester is seeking.
 - ____ Step 2: Determine if you are likely to have records responsive to the request.
 - ____ Step 3: Provide an estimate of search and review time. You may also need to estimate the number of pages of responsive documents to your POC and the FOIA Liaison.
 - ____ Step 4: Search for records responsive to the request once fees are resolved (usually through payment or a fee waiver).
 - ____ Step 5: Determine if records are to be released or withheld from the requester. Exemption 4 protects confidential/proprietary information, including copyrighted material. Exemption 5 protects privileged information. Exemption 6 protects Personally Identifiable Information (PII) (note: use Exemption 7(C) to protect PII in Office of Law Enforcement docs). If you think another exemption may apply, consult with your FOIA Coordinator or FOIA Liaison on applicability.
 - ____ Step 6: Redact the information (but do not "Apply" the redactions) that should be withheld. Complete the Search Log indicating how you conducted the search (e.g., search terms, where you searched).
 - ____ Step 7: Organize the records responsive to the request and submit them to your POC or the FOIA Liaison.
3. Process the request within the allotted time specified for your response.

If you have any questions, please contact the FOIA Liaison or the FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!

Pamela Lawrence - NOAA Federal

From: Pamela Lawrence - NOAA Federal
Sent: Tuesday, September 5, 2017 10:54 AM
To: Mark Graff - NOAA Federal
Cc: James LeDuc - NOAA Federal
Subject: Re: NEW FOIA REQUEST: FOIA Assignment for DOC-NOAA-2017-000351
Attachments: DOC-OS-2017-000351 emails combined REVIEWED.pdf

Here is the document to kick off discussion.

Talk to you in a few.

On Tue, Sep 5, 2017 at 10:51 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hi Pam,

(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)

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On Tue, Sep 5, 2017 at 8:58 AM, Pamela Lawrence - NOAA Federal <pamela.lawrence@noaa.gov> wrote:

(b)(5)

Thank you.

On Tue, Sep 5, 2017 at 8:54 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hello Pam,

Please let me know whenever works for you, and I'd be happy to join the call.

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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On Fri, Sep 1, 2017 at 11:14 AM, Pamela Lawrence - NOAA Federal <pamela.lawrence@noaa.gov> wrote:

Good morning. I would like to set up a call to discuss this FOIA. I'll look on your calendars and find a time.

(b)(5)

On Thu, Aug 17, 2017 at 11:09 AM, James LeDuc - NOAA Federal <james.leduc@noaa.gov> wrote:

Hi,

Attached are the emails and email attachments for your review. Many of the emails are repetitive.

Jim LeDuc

NOAA HCHB Room 58020

Office [202-482-0965](tel:202-482-0965)

C (b)(6)

From: Pamela Lawrence - NOAA Federal [mailto:pamela.lawrence@noaa.gov]

Sent: Thursday, August 10, 2017 6:47 PM

To: James LeDuc - NOAA Federal

Subject: Re: NEW FOIA REQUEST: FOIA Assignment for DOC-NOAA-2017-000351

I just read through the email chain, and note that you said that the documents were too large to mail.

You can use Accellion for larger files. I do not know how to put documents on Accellion, only to get them off, but the FOIA coordinators can assist you.

Also, if you want to put everything on thumb drives, you can FedEx them tomorrow and I will begin work on them Monday.

My office address for FedEx is:

Pamela Lawrence

Fisheries and Protected Resources Section

1315 East West Highway

Room 15112

Silver Spring, MD 20910.

On Thu, Aug 10, 2017 at 6:41 PM, Pamela Lawrence - NOAA Federal <pamela.lawrence@noaa.gov> wrote:

Good evening. Looking forward to assisting you with this.

I am best reached at [240-328-9928](tel:240-328-9928).

My office is in Silver Spring, and I am teleworking tomorrow.

If you can send me the documents electronically, in a form I can review them, I can start tomorrow. The .pdf format is best, and review is much easier with the attachments with their emails, as opposed to a bunch of emails followed by a bunch of attachments.

If the documents are too large to send via Google, Accelion will do.

(b)(5)

Thank you.

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

From: **Kristen Gustafson - NOAA Federal** <kristen.l.gustafson@noaa.gov>

Date: Thu, Aug 10, 2017 at 6:34 PM

Subject: Re: NEW FOIA REQUEST: FOIA Assignment for DOC-NOAA-2017-000351

To: James LeDuc - NOAA Federal <james.leduc@noaa.gov>, Pamela Lawrence - NOAA Federal <pamela.lawrence@noaa.gov>

Cc: Jeff Dillen - NOAA Federal <jeff.dillen@noaa.gov>, Devin Brakob - NOAA Federal <devin.r.brakob@noaa.gov>, "Rod. Vieira" <rod.vieira@noaa.gov>

Hi Jim,

Pam Lawrence in Fisheries and Protected Resources Section of NOAA GC will review this FOIA. She's included on this email, so please contact her to arrange transmitting the documents. Pam, thank you so much for your help! I am deeply appreciative.

-- Kristen

Sent from my iPhone

On Aug 8, 2017, at 3:25 PM, James LeDuc - NOAA Federal <james.leduc@noaa.gov> wrote:

Is there anyone in GC that can review this one other than you guys?

Jim LeDuc

NOAA HCHB Room 58020

Office [202-482-0965](tel:202-482-0965)

C (b)(6)

From: James LeDuc - NOAA Federal [mailto:james.leduc@noaa.gov]

Sent: Thursday, July 13, 2017 11:48 AM

To: Kristen Gustafson - NOAA Federal

Cc: Jeff Dillen - NOAA Federal; Devin Brakob - NOAA Federal

Subject: RE: NEW FOIA REQUEST: FOIA Assignment for DOC-NOAA-2017-000351

Can I give this to someone in GC to review? I am on leave for 2 weeks starting tomorrow.

Jim LeDuc

NOAA HCHB Room 58020

Office [202-482-0965](tel:202-482-0965)

Ce (b)(6)

From: James LeDuc - NOAA Federal [<mailto:james.leduc@noaa.gov>]
Sent: Thursday, July 06, 2017 10:09 AM
To: Kristen Gustafson - NOAA Federal
Cc: Jeff Dillen - NOAA Federal; Devin Brakob - NOAA Federal
Subject: RE: NEW FOIA REQUEST: FOIA Assignment for DOC-NOAA-2017-000351

(b)(5) the FOIA is below:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and on behalf of the Union of Concerned Scientists, I write to request access to and copies of all communications and attachments between National Oceanic and Atmospheric Administration staff and the following individuals from November 14, 2016 to present:

1. Anyone with the following email domain: @ptt.gov
2. Anyone with the following email domain: @donaldjtrump.com

Jim LeDuc

NOAA HCHB Room 58020

Office [202-482-0965](tel:202-482-0965)

Ce (b)(6)

From: Kristen Gustafson - NOAA Federal [<mailto:kristen.l.gustafson@noaa.gov>]
Sent: Thursday, July 06, 2017 10:01 AM
To: James LeDuc - NOAA Federal
Cc: Jeff Dillen - NOAA Federal; Devin Brakob - NOAA Federal
Subject: Re: NEW FOIA REQUEST: FOIA Assignment for DOC-NOAA-2017-000351

Jim,

(b)(5)

Thanks,

Kristen

On Thu, Jul 6, 2017 at 9:56 AM, James LeDuc - NOAA Federal <james.leduc@noaa.gov> wrote:

They are in 2 PDF files that I can put on a jump drive and give to someone for their review.

Jim LeDuc

NOAA HCHB Room 58020

Office [202-482-0965](tel:202-482-0965)

C (b)(6)

From: Kristen Gustafson - NOAA Federal [mailto:kristen.l.gustafson@noaa.gov]
Sent: Thursday, July 06, 2017 9:53 AM
To: James LeDuc - NOAA Federal
Cc: Jeff Dillen - NOAA Federal; Devin Brakob - NOAA Federal
Subject: Re: NEW FOIA REQUEST: FOIA Assignment for DOC-NOAA-2017-000351

Jim,

(b)(5)

Thanks,

Kristen

On Thu, Jul 6, 2017 at 9:39 AM, James LeDuc - NOAA Federal <james.leduc@noaa.gov> wrote:

DOC is asking about the status of this one, can you let me know how I can get these to you for review?

Jim LeDuc

NOAA HCHB Room 58020

Office [202-482-0965](tel:202-482-0965)

C (b)(6)

From: James LeDuc - NOAA Federal [mailto:james.leduc@noaa.gov]
Sent: Monday, June 12, 2017 4:52 PM
To: Kristen Gustafson - NOAA Federal; Jeff Dillen - NOAA Federal
Cc: Devin Brakob - NOAA Federal
Subject: RE: NEW FOIA REQUEST: FOIA Assignment for DOC-NOAA-2017-000351

I don't believe I received a response to my question below or maybe I missed it?

Jim LeDuc

NOAA HCHB Room 58020

Office [202-482-0965](tel:202-482-0965)

Ce (b)(6)

From: James LeDuc - NOAA Federal [mailto:james.leduc@noaa.gov]
Sent: Tuesday, May 30, 2017 2:56 PM
To: Kristen Gustafson - NOAA Federal; Jeff Dillen - NOAA Federal; Heather Book - NOAA Federal
Cc: Devin Brakob - NOAA Federal
Subject: FW: NEW FOIA REQUEST: FOIA Assignment for DOC-NOAA-2017-000351

(b)(5)

The attachments are too large to submit via email. How can I get these to you for review?

Jim LeDuc

NOAA HCHB Room 58020

Office [202-482-0965](tel:202-482-0965)

Ce (b)(6)

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]
Sent: Wednesday, January 11, 2017 2:05 PM
To: James LeDuc - NOAA Federal
Subject: NEW FOIA REQUEST: FOIA Assignment for DOC-NOAA-2017-000351

FYI

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

From: foia@regulations.gov <foia@regulations.gov>
Date: Wed, Jan 11, 2017 at 2:04 PM
Subject: FOIA Assignment for DOC-NOAA-2017-000351
To: "foia@noaa.gov" <foia@noaa.gov>

You have been assigned to the FOIA request DOC-NOAA-2017-000351. Additional details for this request are as follows:

- Assigned By: Lola Stith
- Request Tracking Number: DOC-NOAA-2017-000351
- Due Date: 02/09/2017
- Requester: Yogin Kothari
- Request Track: Simple
- Short Description: N/A
- Long Description: Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and on behalf of the Union of Concerned Scientists, I write to request access to and copies of all communications and attachments between National Oceanic and Atmospheric Administration staff and the following individuals from November 14, 2016 to present:
 1. Anyone with the following email domain: @ptt.gov
 2. Anyone with the following email domain: @donaldjtrump.com

--

Kristen L. Gustafson

Deputy General Counsel

General Counsel's Office

National Oceanic and Atmospheric Administration

U.S. Department of Commerce

Kristen.L.Gustafson@noaa.gov

Office: [202-482-1588](tel:202-482-1588)

Cell (b)(6)

--

Kristen L. Gustafson
Deputy General Counsel
General Counsel's Office
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Kristen.L.Gustafson@noaa.gov
Office: [202-482-1588](tel:202-482-1588)
Cell **(b)(6)**

--

Pamela Lawrence, Attorney Advisor
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Office [\(301\) 713-9672](tel:301-713-9672); Cell [\(240\) 328-9928](tel:240-328-9928)

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Pamela Lawrence, Attorney Advisor
National Oceanic and Atmospheric Administration

U.S. Department of Commerce

Office [\(301\) 713-9672](tel:3017139672); Cell [\(240\) 328-9928](tel:2403289928)

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Pamela Lawrence, Attorney Advisor
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Office [\(301\) 713-9672](tel:3017139672); Cell [\(240\) 328-9928](tel:2403289928)

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Pamela Lawrence, Attorney Advisor
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Pamela Lawrence, Attorney Advisor
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Office (301) 713-9672; Cell (240) 328-9928

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Subject: BRAND NEW item: Official Trump-Pence Presidential Tee
From: "donaldjtrump.com" <contact@email.donaldtrump.com>
Date: 11/17/2016 10:32 AM
To: bmwwf9@mail.missouri.edu

[Make America Great Again](#)

Brett,

Show your pride for the next president of the United States, Donald J. Trump with our brand new Official Trump-Pence Presidential Tee -- our first featured merchandise in our Inaugural TRUMP Collection.

[The Official Trump-Pence Presidential Tee is available to supporters for a contribution of \\$35 today.](#)

[GET MY SHIRT](#)

[Get your collectible Official Trump-Pence Presidential Tee for \\$35 before Mr. Trump is sworn in as the 45th president of the United States of America.](#)

Thank you,

Alex
Store Manager
Team TRUMP

GET MY SHIRT

Contributions to the Trump Make America Great Again Committee are not deductible for federal income tax purposes.

Paid for by Trump Make America Great Again Committee, a joint fundraising committee authorized by and composed of Donald J. Trump for President, Inc. and the Republican National Committee.

[Unsubscribe](#) Or unsubscribe by [email](#)

Subject: Donald J. Trump Tweeted: Heading to Bank Arena in Cincinnati, Ohio for a 7pm rally. Join me!

Tickets:

From: Twitter <info@twitter.com>

Date: 12/1/2016 6:13 PM

To: Robert Carter <robert.carter@noaa.gov>

Your Highlights



Donald J. Trump 
@realDonaldTrump

Heading to U.S. Bank Arena in Cincinnati, Ohio for a 7pm rally.
Join me! Tickets: donaldjtrump.com/schedule/regist...

[reply](#)

[retweet](#) 1.3K

[favorite](#) 4.8K



ABC News 
@ABC

"You belong. Stay strong. Be blessed. We are one America."
Texas man's message of support to Muslim community.
abcn.ws/2gLFZOg

[reply](#)

[retweet](#) 55

[favorite](#) 120



Travis Frederick 
@tfrederick72

It's Gameday! Check out the action from anyw here tonight.
[#DallasCow boys tnf.tw itter.com](https://twitter.com/tnf/tw/ittr.com)

[reply](#)

[retweet](#) 120

[favorite](#) 370

LIKED BY

Kris Williams



Katy Mixon 
@KatyEMixon

Thank you so much!!! twitter.com/jordansmom70/s...

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Kris Williams [▼]
[@KrisWilliams](#)

This show is badass! Would kill to be on an ep of
[@HistoryVikings](#) 🗡️🛡️ [twitter.com/daleearnold/st...](#)

[reply](#)

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Dana Bash [▼]
[@DanaBashCNN](#)

Thank you! [twitter.com/sheilalkaplan/...](#)

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This email was generated for [@MikeBob96](#).

Twitter, Inc. 1355 Market Street, Suite 900 San Francisco, CA 94103

Subject: The Daily Show Tweeted: Trevor weighs in on Attorney General nominee Jeff Sessions.

From: Twitter <info@twitter.com>

Date: 12/1/2016 7:14 PM

To: "Natalie.c-manning" <natalie.c-manning@noaa.gov>

Your Highlights



The Daily Show ▾
@TheDailyShow

Trevor weighs in on Attorney General nominee Jeff Sessions. on.cc.com/2gEMgIG pic.twitter.com/kEMAR7QSFe

[reply](#)

[retweet](#) 95

[favorite](#) 260



ABC News ▾
@ABC

Giant 53-pound snapping turtle rescued after being found wedged at the end of drain pipe on Texas construction site. abcnews.com/2gM0UR1

[reply](#)

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Donald J. Trump ▾
@realDonaldTrump

Heading to U.S. Bank Arena in Cincinnati, Ohio for a 7pm rally. Join me! Tickets: donaldjtrump.com/schedule/regist...

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BBC News (UK) ▾
@BBCNews

Fawcety Towers star Sachs dies aged 86

Fawcety Towers star Sachs dies aged 86 - BBC News

Faw lty Tow ers star Andrew Sachs, w ho played Spanish w aiter Manuel in the sitcom, has died at ... [more](#)
bbc.com

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Funny Or Die 
@funnyordie

Get food for free by looking sad.

11 Things Your Dog Can Do Better Than You

11 Things Your Dog Can Do Better Than You

#4. Dunk a basketball (assuming your dog is Air Bud).

funnyordie.com

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Reuters Top News 
@Reuters

Pride but not much profit in Melania Trump's hometow n
reut.rs/2gM3rLg

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Twitter, Inc. 1355 Market Street, Suite 900 San Francisco, CA 94103

Subject: Trump in NC!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/2/2016 8:06 PM

To: Brian Shaddrix <brian.shaddrix@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

stars
USA THANK YOU TOUR 2016 IN
FAYETTEVILLE, NC ON TUESDAY!
STARS

Dear Brian,

Join President-Elect Donald J. Trump for the USA Thank You Tour 2016 in Fayetteville, NC **Tuesday, Dec. 6th at 7:00 PM!** [Get your tickets here](#). Details about the event are below :

Tuesday, Dec. 6th: Fayetteville, NC

Crown Coliseum

1960 Coliseum Dr

Fayetteville, NC 28306

Doors Open: 4:00 PM

Event Begins: 7:00 PM

[Get your tickets here.](#)

Please limit personal items and arrive early to expedite entrance into the venue - please note, **NO homemade signs, banners, professional cameras with a detachable lens, tripods, monopods, selfie sticks, back packs or large bags will be permitted into the venue.**

We hope to see you this Tuesday!

Limited-Edition USA Thank You Tour 2016 merchandise will be sold at this event. For the holidays, get your MAGA gear [here](#).

Sincerely,

Team Trump–Pence

TEXT **TRUMP** TO **88022** TO GET EXCLUSIVE UPDATES

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725 5th Avenue · New York, NY · 10022
info@donaldtrump.com

Subject: Trump in NC!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/2/2016 5:23 PM

To: Glenn Salvador <glenn.salvador@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

stars
USA THANK YOU TOUR 2016 IN
FAYETTEVILLE, NC ON TUESDAY!
STARS

Dear Glenn,

Join President-Elect Donald J. Trump for the USA Thank You Tour 2016
in Fayetteville, NC **Tuesday, Dec. 6th at 7:00 PM!** [Get your tickets](#)
[here](#). Details about the event are below :

Tuesday, Dec. 6th: Fayetteville, NC

Crown Coliseum

1960 Coliseum Dr

Fayetteville, NC 28306

Doors Open: 4:00 PM

Event Begins: 7:00 PM

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Sincerely,

Team Trump–Pence

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725 5th Avenue · New York, NY · 10022
info@donaldtrump.com

Subject: NWS Info Request for Transition

From: William Gaynor <william.c.gaynor@ptt.gov>

Date: 12/6/2016 10:17 AM

To: "troy.wilds@noaa.gov" <troy.wilds@noaa.gov>

CC: "Casias, Lisa (Federal)" <lcasias@doc.gov>

Troy,

It was a pleasure meeting you last week, thank you for making time.

I've had a request for very general information regarding the recent launch of the NWS Satellite and the planned 2017 launch. A paragraph on each would be great.

Thanks!

Willie Gaynor

Subject: Re: NWS Info Request for Transition
From: William Gaynor <william.c.gaynor@ptt.gov>
Date: 12/6/2016 10:53 AM
To: Troy Wilds - NOAA Federal <troy.wilds@noaa.gov>
CC: "Casias, Lisa (Federal)" <lcasias@doc.gov>

Thanks Troy - not looking for anything too detailed, just high level background.

On Tue, Dec 6, 2016 at 10:52 AM Troy Wilds - NOAA Federal <troy.wilds@noaa.gov> wrote:

Hi Willie,

The pleasure was all mine.

We'd be happy to get that information for you. I'll check with my folks and I'll get a response to you as soon as possible.

Best,
Troy

On Tuesday, December 6, 2016, William Gaynor <william.c.gaynor@ptt.gov> wrote:

Troy,

It was a pleasure meeting you last week, thank you for making time.

I've had a request for very general information regarding the recent launch of the NWS Satellite and the planned 2017 launch. A paragraph on each would be great.

Thanks!
Willie Gaynor

--

Troy S. Wilds
Deputy Chief of Staff - NOAA
Office: (202) 482-3193
Cell: (719) 440-8021

National Oceanic and Atmospheric Administration
1401 Constitution Ave., NW
Washington, D.C. 20230

Subject: Re: NWS Info Request for Transition
From: William Gaynor <william.c.gaynor@ptt.gov>
Date: 12/7/2016 12:01 PM
To: Troy Wilds - NOAA Federal <troy.wilds@noaa.gov>

Troy,

Any status? Looking for something very basic and almost conversational. The info was really needed in a timely manner to brief our nominees as they went to Hill for meetings today.

On Tue, Dec 6, 2016 at 10:57 AM Troy Wilds - NOAA Federal <troy.wilds@noaa.gov> wrote:

Absolutely, Willie. That won't be a problem.

Troy

On Tuesday, December 6, 2016, William Gaynor <william.c.gaynor@ptt.gov> wrote:

Thanks Troy - not looking for anything too detailed, just high level background.

On Tue, Dec 6, 2016 at 10:52 AM Troy Wilds - NOAA Federal <troy.wilds@noaa.gov> wrote:

Hi Willie,

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Best,
Troy

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Troy,

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I've had a request for very general information regarding the recent launch of the NWS Satellite and the planned 2017 launch. A paragraph on each would be great.

Thanks!
Willie Gaynor

--

Troy S. Wilds
Deputy Chief of Staff - NOAA
Office: (202) 482-3193
Cell: (719) 440-8021

National Oceanic and Atmospheric Administration
1401 Constitution Ave., NW
Washington, D.C. 20230

--

Troy S. Wilds
Deputy Chief of Staff - NOAA
Office: (202) 482-3193
Cell: (719) 440-8021

National Oceanic and Atmospheric Administration
1401 Constitution Ave., NW
Washington, D.C. 20230

Subject: Thank you for applying

From: Do Not Reply <noreply@ptt.gov>

Date: 12/7/2016 3:04 PM

To: "chris.oliver@noaa.gov" <chris.oliver@noaa.gov>

Hello Christopher Oliver,

Thank you for your interest in serving America. Your commitment, dedication and service has been realized in this historic moment. The challenges ahead for us cannot be solved by any individual, but rather by a team of great Americans. Through integrity, perseverance and hard work, we will make America Great Again. Thank you for your willingness to join me in this effort.

If you have any questions, please contact apply@ptt.gov. Your application will remain under consideration for the duration of the Trump Administration. All submitted applications will be reviewed as we seek the best qualified candidates to assume this hard work of making America Great Again.

Sincerely,

Donald J. Trump, President-Elect

Subject: Trump in Baton Rouge, LA this Friday!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/7/2016 5:25 PM

To: Robert Carter <robert.carter@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

stars
PRESIDENT-ELECT TRUMP THIS FRIDAY IN
BATON ROUGE, LA!
STARS

Dear Robert,

Remember to get your tickets to join President-Elect Donald J. Trump in Baton Rouge, La this **Friday, Dec. 9th at 12:00 PM** for a rally! [Get your tickets here](#). Details about the event are below :

Friday, Dec. 9th: Baton Rouge, LA

Dow Chemical Hangar
3259 Harriet Quimby Av.
Baton Rouge, Louisiana 70807

Doors Open: 10:00 AM

Event Begins: 12:00 PM

We hope to see you this Friday!

Sincerely,

Team Trump–Pence

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To donate, go here: <https://secure.donaldjtrump.com/donate/>

Contributions are not tax deductible for federal income tax purposes.

P.S. If you would like to purchase official campaign gear, [click here](#).

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info@donaldtrump.com

Subject: Trump-Pence in PA!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/7/2016 6:09 PM

To: Glenn Salvador <glenn.salvador@noaa.gov>

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www.DonaldJTrump.com

stars
USA THANK YOU TOUR 2016 ON NEXT
THURSDAY IN HERSHEY, PA!
STARS

Dear Glenn,

Join President-Elect Donald J. Trump and Vice-President-Elect Mike Pence for the USA Thank You Tour 2016 in Hershey, PA next **Thursday, Dec. 15th at 7:00 PM!** [Get your tickets here.](#) Details about the event are below :

Thursday, Dec. 15th: Hershey, PA

Giant Arena
550 Hersheypark Dr
Hershey, PA 17033

Doors Open: 4:00 PM

Event Begins: 7:00 PM

[Get your tickets here.](#)

Please limit personal items and arrive early to expedite entrance into the venue - please note, **NO homemade signs, banners, professional cameras with a detachable lens, tripods, monopods, selfie sticks, back packs or large bags will be permitted into the venue.**

We hope to see you next Thursday!

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Sincerely,

Team Trump-Pence

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info@donaldtrump.com

Subject: Trump-Pence in PA!

From: "Donald J. Trump for President, Inc." <info@donalddjtrump.com>

Date: 12/7/2016 9:13 PM

To: Jeffrey Stuart <jeffrey.stuart@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

stars
USA THANK YOU TOUR 2016 ON NEXT
THURSDAY IN HERSHEY, PA!
STARS

Dear Jeffrey,

Join President-Elect Donald J. Trump and Vice-President-Elect Mike Pence for the USA Thank You Tour 2016 in Hershey, PA next **Thursday, Dec. 15th at 7:00 PM!** [Get your tickets here.](#) Details about the event are below :

Thursday, Dec. 15th: Hershey, PA

Giant Arena
550 Hersheypark Dr
Hershey, PA 17033

Doors Open: 4:00 PM

Event Begins: 7:00 PM

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Sincerely,

Team Trump-Pence

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info@donaldtrump.com

Subject: Trump in Baton Rouge, LA Tomorrow!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/8/2016 8:46 PM

To: Robert Carter <robert.carter@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

stars
**PRESIDENT-ELECT TRUMP TOMORROW IN
BATON ROUGE, LA!
STARS**

Dear Robert,

Remember to get your tickets to join President-Elect Donald J. Trump in Baton Rouge, LA tomorrow **Friday, Dec. 9th at 12:00 PM** for a rally! [Get your tickets here](#). Details about the event are below :

Friday, Dec. 9th: Baton Rouge, LA

Dow Chemical Hangar
3259 Harriet Quimby Av.
Baton Rouge, Louisiana 70807

Doors Open: 10:00 AM

Event Begins: 12:00 PM

We hope to see you tomorrow !

Sincerely,

Team Trump–Pence

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info@donaldtrump.com

Subject: Trump in Alabama!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/9/2016 7:35 PM

To: Robert Carter <robert.carter@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

stars
USA THANK YOU TOUR 2016 IN AL NEXT
SATURDAY!
STARS

Dear Robert,

Join President-Elect Donald J. Trump and team for the USA Thank You Tour 2016 in Mobile, AL on **Saturday, Dec. 17th at 3:00 PM!** [Get your tickets here.](#) Details about the event are below :

Saturday, Dec. 17th: Mobile, AL

Ladd-Peebles Stadium

1621 Virginia St.

Mobile, AL 36604

Gates Open: 11:00 AM (CST)

Event Begins: 3:00 PM (CST)

[Get your tickets here.](#)

Please limit personal items and arrive early to expedite entrance into the venue - please note, **NO homemade signs, banners, professional cameras with a detachable lens, tripods, monopods, selfie sticks, back packs or large bags will be permitted into the venue.**

We hope to see you next Saturday!

Limited-Edition USA Thank You Tour 2016 merchandise will be sold at this event. For the holidays, get your MAGA gear [here](#).

Sincerely,

Team Trump–Pence

TEXT **TRUMP** TO **88022** TO GET EXCLUSIVE UPDATES

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info@donaldtrump.com

Subject: Trump in AL Saturday!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/13/2016 3:49 PM

To: Robert Carter <robert.carter@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

stars
USA THANK YOU TOUR 2016
ON SATURDAY IN AL !
STARS

Dear Robert,

It's the final stop for the USA Thank You Tour 2016, the last one, where the first great Campaign rally happened. So join President-Elect Donald J. Trump and team in Mobile, AL on **Saturday, Dec. 17th at 3:00 PM!**

[Get your tickets here.](#) Details about the event are below :

Saturday, Dec. 17th: Mobile, AL

Ladd-Peebles Stadium

1621 Virginia St.

Mobile, AL 36604

Gates Open: 11:00 AM (CST)

Event Begins: 3:00 PM (CST)

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Sincerely,

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725 5th Avenue · New York, NY · 10022
info@donaldtrump.com

Subject: Re: NOAA's Top 25 Grants

From: William Gaynor <william.c.gaynor@ptt.gov>

Date: 12/15/2016 9:14 AM

To: Troy Wilds - NOAA Federal <troy.wilds@noaa.gov>

CC: "Casias, Lisa (Federal)" <lcasias@doc.gov>, "Marston, Diane" <DMarston@doc.gov>, "Patterson, Gerald (Federal)" <GPatterson1@doc.gov>

Thank you Troy and please thank the entire NOAA and line teams for all they've done regarding Transition. You guys have been tremendously responsive as well as generous with your time and my team and I are very grateful.

We'll have many more questions and discussions, but wanted to say thanks.

Cheers,
Willie

On Thu, Dec 15, 2016 at 8:44 AM Troy Wilds - NOAA Federal <troy.wilds@noaa.gov> wrote:

Good morning, Willie.

Attached you will find NOAA's response to your request for a list of our top 25 grants. You may notice that there are actually 27 grants listed. As some grants in this group are related to others, we grouped them together to avoid confusion. To fully respond to your question, we included all 27.

This document has been cleared by General Counsel.

Please let us know if you have any questions.

Best,
Troy

--

Troy S. Wilds
Deputy Chief of Staff - NOAA
Office: (202) 482-3193
Cell: (719) 440-8021

National Oceanic and Atmospheric Administration
1401 Constitution Ave., NW
Washington, D.C. 20230

Subject: Trump in AL this Weekend!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/15/2016 12:52 PM

To: Robert Carter <robert.carter@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

stars
USA THANK YOU TOUR 2016
ON SATURDAY IN AL !
STARS

Dear Robert,

In two days join President-Elect Donald J. Trump and team at the final stop for the USA Thank You Tour 2016 in Mobile, AL on **Saturday, Dec. 17th at 3:00 PM!** [Get your tickets here.](#) Details about the event are

below :

Saturday, Dec. 17th: Mobile, AL

Ladd-Peebles Stadium

1621 Virginia St.

Mobile, AL 36604

Gates Open: 11:00 AM (CST)

Event Begins: 3:00 PM (CST)

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We hope to see you in two days!

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Sincerely,

Team Trump–Pence

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725 5th Avenue · New York, NY · 10022
info@donaldtrump.com

Subject: Re: NWS GB 1 - Specialized Weather Information

From: William Gaynor <william.c.gaynor@ptt.gov>

Date: 12/16/2016 9:22 AM

To: "Marston, Diane (Federal)" <DMarston@doc.gov>

CC: "Casias, Lisa (Federal)" <lcasias@doc.gov>, "David Bohigian (david.s.bohigian@ptt.gov)" <david.s.bohigian@ptt.gov>, "George Sifakis (george.a.sifakis@ptt.gov)" <george.a.sifakis@ptt.gov>, "Patterson, Gerald (Federal)" <GPatterson1@doc.gov>, "Wilds, Troy (Federal)" <Troy.Wilds@noaa.gov>

Thank you!

On Fri, Dec 16, 2016 at 9:14 AM Marston, Diane (Federal) <DMarston@doc.gov> wrote:

Morning Willie,

Per your request at the NOAA NWS overview briefing, attached is NWS' response on specialized weather information. This document has been cleared by OGC and will be posted on BoardPad.

Please give us ring if you need any additional information.

Thanks,

Diane

Diane Marston

Office of the Deputy Assistant Secretary

for Administration

Department of Commerce

Telephone: 202-482-1294

Subject: USA Thank You Tour 2016 - Last Chance!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/17/2016 9:09 PM

To: Ashby Hawse <Ashby.Hawse@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

Dear Ashby,

Today is the final stop of the USA Thank You Tour 2016 in Mobile, AL. [Get your Thank You Tour merchandise for the holidays now!](#) It's your last chance.

Sincerely,

Team Trump-Pence

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725 5th Avenue · New York, NY · 10022
info@donaldtrump.com

Subject: USA Thank You Tour 2016 - Last Chance!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/17/2016 4:49 PM

To: Brian Shaddrix <brian.shaddrix@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

Dear Brian,

Today is the final stop of the USA Thank You Tour 2016 in Mobile, AL. [Get your Thank You Tour merchandise for the holidays now!](#) It's your last chance.

Sincerely,

Team Trump-Pence

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info@donaldtrump.com

Subject: USA Thank You Tour 2016 - Last Chance!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/17/2016 8:59 PM

To: Jeffrey Stuart <jeffrey.stuart@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

Dear Jeffrey,

Today is the final stop of the USA Thank You Tour 2016 in Mobile, AL. [Get your Thank You Tour merchandise for the holidays now!](#) It's your last chance.

Sincerely,

Team Trump-Pence

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This email was sent to jeffrey.stuart@noaa.gov.
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info@donaldtrump.com

Subject: USA Thank You Tour 2016 - Last Chance!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/17/2016 3:19 PM

To: Robert Carter <robert.carter@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

Dear Robert,

Today at 4:00 PM (EST) is the final stop of the USA Thank You Tour 2016 in Mobile, AL. [Get your Thank You Tour merchandise for the holidays now!](#) It's your last chance.

Sincerely,

Team Trump-Pence

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info@donaldtrump.com

Subject: USA Thank You Tour 2016 - Last Chance!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/17/2016 9:25 PM

To: Glenn Salvador <glenn.salvador@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

Dear Glenn,

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Sincerely,

Team Trump-Pence

[twitter](#) [facebook](#) [instagram](#) [youtube](#)

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This email was sent to glenn.salvador@noaa.gov.

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725 5th Avenue · New York, NY · 10022

info@donaldtrump.com

Subject: Thank you for standing with Trump
From: Team Trump <info@donaldtrump.com>
Date: 12/19/2016 8:12 AM
To: veitl.wirth@noaa.gov

[Donald J Trump](#)

Welcome to Team Trump!

Thank you for signing up to be part of my Presidential Campaign. Together, we are going to bring common sense back to Washington.

We will rebuild the American Dream.

Make America Great Again!

[Contribute \\$100, \\$75, \\$50, or even \\$35 to Make America Great Again!](#)

Sincerely,
Team TRUMP

CONTRIBUTE NOW



www.DonaldJTrump.com

725 5th Avenue New York, NY 10022

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Subject: USA Thank You Tour 2016 - Last Chance!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/19/2016 1:43 AM

To: David Kauwe <david.kauwe@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

Dear David,

This weekend was the final stop of the USA Thank You Tour 2016 in Mobile, AL. [Get your Thank You Tour merchandise for the holidays now!](#) It's your last chance.

Sincerely,

Team Trump-Pence

[twitter](#) [facebook](#) [instagram](#) [youtube](#)

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This email was sent to david.kauwe@noaa.gov.

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info@donaldtrump.com

Subject: USA Thank You Tour 2016 - Last Chance!

From: "Donald J. Trump for President, Inc." <info@donaldjtrump.com>

Date: 12/19/2016 4:00 AM

To: Gene Stebley <gene.stebley@noaa.gov>

[Trump - Make America Great Again](#)

www.DonaldJTrump.com

Dear Gene,

Over the weekend was the final stop of the USA Thank You Tour 2016 in Mobile, AL. [Get your Thank You Tour merchandise for the holidays now!](#) It's your last chance.

Sincerely,

Team Trump-Pence

[twitter](#) [facebook](#) [instagram](#) [youtube](#)

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This email was sent to gene.stebley@noaa.gov.

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725 5th Avenue · New York, NY · 10022

info@donaldtrump.com

Subject: Quick Transition Update
From: Judy Reinke <Judy.Reinke@trade.gov>
Date: 12/22/2016 4:31 PM
To: CS Managers <CSManagers@trade.gov>

Hi CS Manager colleagues –

This is likely the last transition update of the year – although, I’m sure the Transition Landing Teams will still be working hard throughout the holidays!

Arun, Holly and I met with David Bohigian of the Transition Team last Friday, together with a few other ITA/CS folks, and it was a smooth and thoughtful conversation that largely followed the Powerpoint that I circulated to you previously. There was a lot of interest in what had changed in the 8 years since David was in ITA (consolidation, SelectUSA, etc.), and he demonstrated a really solid understanding of our mission and goals. The only “get-back” involved a question on how many SME firms were included in the 100 Advocacy Successes (and, later, a question on the export value of those successes). This is a good sign that David and the transition understand the importance of SMEs and their ability to export and grow jobs in America.

I’m forwarding an email chain from our ITA Transition POC, Tu-Trang Phan, that gives you links to what the Department has released under FOIA relating to the transition – as you see, transparency is a big part of this transition process.

I also want to share a link to a paper written in September by Wilbur Ross, the Commerce Secretary-nominee, and Peter Navarro, newly named to a new White House Trade Team: https://assets.donaldtrump.com/Trump_Economic_Plan.pdf I hope you find this interesting!

Best wishes for the holidays to everyone – and I’m sure we’ll be back with more news in the New Year!

Judy

From: Tu-Trang Phan
Sent: Thursday, December 22, 2016 2:34 PM
To: Paul Piquado <Paul.Piquado@trade.gov>; Ted Dean <Ted.Dean@trade.gov>; Arun Kumar <Arun.Kumar@trade.gov>; Ken Hyatt <Ken.Hyatt@trade.gov>; Ethan Corson <Ethan.Corson@trade.gov>; Jean Janicke <Jean.Janicke@trade.gov>; Joe Paiva <Joe.Paiva@trade.gov>; Judy Reinke <Judy.Reinke@trade.gov>; Ronald Lorentzen <Ronald.Lorentzen@trade.gov>; Thomas McGinty <Thomas.McGinty@trade.gov>; Tim Rosado <Tim.Rosado@trade.gov>; Holly Vineyard <Holly.Vineyard@trade.gov>; Scott Ewalt <Scott.Ewalt@trade.gov>; Samantha Biondo <Samantha.Biondo@trade.gov>; Carole Showers <Carole.Showers@trade.gov>; Arun Venkataraman <Arun.Venkataraman@trade.gov>; Jordan Haas <Jordan.Haas@trade.gov>
Cc: Valerie McNeill <Valerie.McNeill@trade.gov>; Lesley Elouaradia <Lesley.Elouaradia@trade.gov>; Rita Steele <Rita.Steele@trade.gov>
Subject: 12/22 Transition Update

- (1) For anyone interested in seeing the Department’s response to the FOIA request, it was posted to FOIAonline.regulations.gov at <https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d280ff53c1>.
- (2) The National Archives and Records Administration (NARA) sent out updated guidance today on managing websites as part of the transition. The message is available on NARA's Records Express blog at: <https://records-express.blogs.archives.gov/2016/12/22/agency-responsibilities-for-managing-web-records/>

[this has been shared with ITA/OPA for action].

Tu-Trang Phan

Office of the Deputy Under Secretary
Department of Commerce | International Trade Administration
[\(202\) 482-0480](tel:(202)482-0480); [Tu-Trang.Phan@trade.gov](mailto:TU-Trang.Phan@trade.gov)

*ITA Day is **January 12, 2017!** Please click [here](#) to **SAVE-THE-DATE!***

From: Tu-Trang Phan

Sent: Wednesday, December 21, 2016 3:15 PM

To: Paul Piquado <Paul.Piquado@trade.gov>; Ted Dean <Ted.Dean@trade.gov>; Arun Kumar <Arun.Kumar@trade.gov>; 'Kenneth Joseph Ehrli Hyatt (Ken.hyatt@trade.gov)' <Ken.Hyatt@trade.gov>; Ethan Corson <Ethan.Corson@trade.gov>; Jean Janicke <Jean.Janicke@trade.gov>; Joe Paiva <Joe.Paiva@trade.gov>; Judy Reinke <Judy.Reinke@trade.gov>; Ronald Lorentzen <Ronald.Lorentzen@trade.gov>; Thomas McGinty <Thomas.McGinty@trade.gov>; Tim Rosado <Tim.Rosado@trade.gov>; Holly Vineyard <Holly.Vineyard@trade.gov>; Scott Ewalt <Scott.Ewalt@trade.gov>; Samantha Biondo <Samantha.Biondo@trade.gov>; Carole Showers <Carole.Showers@trade.gov>; Arun Venkataraman <Arun.Venkataraman@trade.gov>; Jordan Haas <Jordan.Haas@trade.gov>

Cc: 'Valerie McNeill (Valerie.McNeill@trade.gov)' <Valerie.McNeill@trade.gov>; 'Lesley Elouaradia (Lesley.Elouaradia@trade.gov)' <Lesley.Elouaradia@trade.gov>; Rita Steele <Rita.Steele@trade.gov>

Subject: 12/21 Transition Update

The transition team continues to be very complimentary of the work we have done and are thankful for quick turnaround on getbacks.

You may have heard about so-called “leaks” of transition documents to the public. The Department has provided clarification that these are not leaks – the Department received a FOIA request for information contained in the transition binders. The Department filled that request and posted to FOIA online, which is the normal process for all FOIA requests. These documents have since been reposted on a number of other sites. Moving forward, the Department will notify us of any receipt of FOIA requests and will also let us know what is released so we are aware in advance.

Tu-Trang Phan

Office of the Deputy Under Secretary
Department of Commerce | International Trade Administration
[\(202\) 482-0480](tel:(202)482-0480); [Tu-Trang.Phan@trade.gov](mailto:TU-Trang.Phan@trade.gov)

Subject: Fw: Inauguration Pint Glasses
From: Caz Salvador <cazsalvador@yahoo.com>
Date: 1/10/2017 5:04 PM
To: <glenn.salvador@noaa.gov>

--- On Tue, 1/10/17, donaldjtrump.com <contact@gopteam.gop> wrote:

From: donaldjtrump.com <contact@gopteam.gop>
Subject: Inauguration Pint Glasses
To: cazsalvador@yahoo.com
Date: Tuesday, January 10, 2017, 1:14 PM

#yiv1379419577

#yiv1379419577 .yiv1379419577content
{width:100%;max-width:570px;}

#yiv1379419577

```
@media screen and ( _filtered_a ){
#yiv1379419577 body {
padding:50px 0px 60px 0px !important;}
#yiv1379419577 .yiv1379419577hide-mobile {
display:none;}
#yiv1379419577 .yiv1379419577mobile-left {
text-align:left;}
#yiv1379419577 .yiv1379419577mobile-sm-font {
font-size:20px;}
#yiv1379419577 img#yiv1379419577cta {
width:100% !important;}
#yiv1379419577 #yiv1379419577social-link-block {
padding:60px 0 60px 0 !important;}
}
```

Grab
your set today! |

Caz,

With Inauguration Day just days away, we've launched an Inaugural Collection of special-edition merchandise to commemorate this historic day in American history.

A best seller among the Inaugural Collection is a set of two Made-in-America 16-ounce pint glasses decorated with a special seal honoring the 45th president.

Get your Official Inauguration Pint Glass Set now to celebrate the swearing in of President-Elect Trump.

Cheers to America's next president in your very own Official Inauguration Pint Glass.

Get your Official Inauguration Pint Glass Set today to get in time for January 20th.

Alex

Trump Store Manager

Get
Your Pint Glass Set

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Kolsky, Joshua (USADC)

From: Kolsky, Joshua (USADC)
Sent: Tuesday, September 5, 2017 3:16 PM
To: Stacey Nathanson - NOAA Federal; John Almeida - NOAA Federal
Cc: Bogomolny, Michael (Federal); Mark Graff - NOAA Federal
Subject: RE: Proposed Schedule COA FOIA
Attachments: JSR -- Proposed Order.docx; JSR.DOCX

(b)(5)

Thanks,
Josh

From: Stacey Nathanson - NOAA Federal [mailto:stacey.nathanson@noaa.gov]
Sent: Tuesday, September 5, 2017 9:48 AM
To: John Almeida - NOAA Federal <john.almeida@noaa.gov>
Cc: Kolsky, Joshua (USADC) <JKOLSKY@usa.doj.gov>; Bogomolny, Michael (Federal) <MBogomolny@doc.gov>; Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Subject: Re: Proposed Schedule COA FOIA

(b)(5)

(b)(5). Thanks!

Stacey

Stacey Nathanson
Attorney-Advisor
NOAA Office of the General Counsel
Fisheries and Protected Resources Section
Phone: 301-713-9673
Email: Stacey.Nathanson@noaa.gov

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On Tue, Sep 5, 2017 at 8:57 AM, John Almeida - NOAA Federal <john.almeida@noaa.gov> wrote:

(b) (5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

John Almeida - NOAA Federal

From: John Almeida - NOAA Federal
Sent: Wednesday, September 6, 2017 1:23 PM
To: Stacey Nathanson - NOAA Federal; Bogomolny, Michael (Federal); Mark Graff - NOAA Federal
Subject: Fwd: Proposed Schedule COA FOIA
Attachments: JSR -- Proposed Order.docx; JSR.DOCX

(b) (5)

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

From: Kolsky, Joshua (USADC) <Joshua.Kolsky@usdoj.gov>
Date: Tue, Sep 5, 2017 at 3:16 PM
Subject: RE: Proposed Schedule COA FOIA
To: Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>, John Almeida - NOAA Federal <john.almeida@noaa.gov>
Cc: "Bogomolny, Michael (Federal)" <MBogomolny@doc.gov>, Mark Graff - NOAA Federal <mark.graff@noaa.gov>

(b) (5)

Thanks,

Josh

From: Stacey Nathanson - NOAA Federal [mailto:stacey.nathanson@noaa.gov]
Sent: Tuesday, September 5, 2017 9:48 AM
To: John Almeida - NOAA Federal <john.almeida@noaa.gov>
Cc: Kolsky, Joshua (USADC) <JKOLSKY@usa.doj.gov>; Bogomolny, Michael (Federal) <MBogomolny@doc.gov>; Mark Graff - NOAA Federal <mark.graff@noaa.gov>

(b)(5)

[Redacted text block]

(b)(5)

(b)(5)

(b)(5)

(b)(5)

Lola Stith - NOAA Affiliate

From: Lola Stith - NOAA Affiliate
Sent: Thursday, September 7, 2017 1:57 PM
To: Mark Graff - NOAA Affiliate
Subject: August Monthly FOIA Report (DRAFT FOR YOUR REVIEW/APPROVAL)
Attachments: FOIA Monthly Status Report 08-31-2017.xlsx; FOIA Monthly Status Report 08-31-2017.pdf; Backlog_082017.xls; Open Requests_082017.xls; Incoming_082017.xls; Closed_082017.xls

Hi Mark - Please find Excel/PDF copies of the monthly report attached for review/approval. I have also attached the supporting files as a reference for the data compiled in the monthly report.

Please let me know if you have questions.

--

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [REDACTED])
lola.m.stith@noaa.gov

Tracking Number	Type	Requester	Submitted
DOC-NOAA-2017-000298	Request	Charles Mouton	11/30/2016
DOC-NOAA-2015-001484	Request	Richard Knudsen	06/29/2015
DOC-NOAA-2015-001485	Request	Richard Knudsen	06/29/2015
DOC-NOAA-2015-001487	Request	Richard Knudsen	06/29/2015
DOC-NOAA-2017-001582	Request	Lisa Conley	07/24/2017
DOC-NOAA-2017-001382	Request	Margaret Townsend	06/13/2017
DOC-NOAA-2017-001321	Request	Elizabeth N. Moran	06/02/2017
DOC-NOAA-2017-000580	Request	Bill Marshall	02/08/2017
DOC-NOAA-2017-000613	Request	Dan Vergano	02/07/2017
DOC-NOAA-2017-000579	Request	Emily Yehle	02/08/2017
DOC-NOAA-2016-000351	Request	Bill Marshall	10/30/2015
DOC-NOAA-2017-001546	Request	Andrew G. Ogden	07/18/2017
DOC-NOAA-2017-001394	Request	Ivy N. Fredrickson	06/19/2017
DOC-NOAA-2017-001530	Request	Katherine Poole	07/13/2017
DOC-NOAA-2017-001534	Request	Zeenat Mian	07/17/2017
DOC-NOAA-2017-001316	Request	Chris Saeger	06/07/2017
DOC-NOAA-2017-001505	Request	Baylee Bunyard	07/07/2017
DOC-NOAA-2017-001411	Request	Margaret Townsend	06/22/2017
DOC-NOAA-2017-001194	Request	ERIC R. BOLINDER	05/02/2017
DOC-NOAA-2017-001431	Request	Margaret Townsend	06/27/2017
DOC-NOAA-2017-001391	Request	Elizabeth A. Mitchell	06/16/2017
DOC-NOAA-2017-001420	Request	Russ Kick	06/25/2017
DOC-NOAA-2017-001345	Request	David A. Moskowitz	05/24/2017
DOC-NOAA-2017-001376	Request	Gabe Flick	06/12/2017
DOC-NOAA-2017-000226	Request	Emma Hiolski	11/29/2016
DOC-NOAA-2017-001426	Referral	William W. Sapp	06/26/2017
DOC-NOAA-2017-001198	Request	Brett Sommermeyer	05/11/2017
DOC-NOAA-2017-001285	Request	Jared S. Goodman	05/30/2017
DOC-NOAA-2017-001383	Request	Margaret Townsend	06/13/2017
DOC-NOAA-2017-001092	Request	Brettny E. Hardy	04/26/2017
DOC-NOAA-2017-001093	Request	Brettny E. Hardy	04/26/2017
DOC-NOAA-2017-001094	Request	Brettny E. Hardy	04/26/2017
DOC-NOAA-2017-001200	Request	Meera Gajjar	05/11/2017
DOC-NOAA-2017-001038	Request	Sean Sherman	04/17/2017
DOC-NOAA-2017-001220	Request	Nathan Eagle	05/16/2017
DOC-NOAA-2017-001217	Request	Nathan Eagle	05/16/2017
DOC-NOAA-2017-001219	Request	Nathan Eagle	05/16/2017
DOC-NOAA-2017-000994	Request	Marisel Combs	04/10/2017
DOC-NOAA-2017-000865	Request	Zeenat Mian	03/23/2017
DOC-NOAA-2017-000986	Request	Tristan R. Armer	04/10/2017
DOC-NOAA-2017-000744	Request	Zeenat Mian	03/08/2017
DOC-NOAA-2017-000304	Request	Bryn Blomberg	11/30/2016
DOC-NOAA-2017-000342	Request	Ryan P. Mulvey	12/13/2016
DOC-NOAA-2017-000170	Request	Kara McKenna	11/09/2016
DOC-NOAA-2017-000195	Request	Thomas Knudson	11/17/2016
DOC-NOAA-2016-001299	Request	Thomas Knudson	06/15/2016
DOC-NOAA-2016-001751	Request	Thomas Knudson	09/14/2016
DOC-NOAA-2016-001763	Request	Thomas Knudson	09/14/2016
DOC-NOAA-2016-001390	Request	Jennie Frost	07/05/2016
DOC-NOAA-2016-000959	Request	Office Administrator	04/12/2016
DOC-NOAA-2016-000423	Request	Ryan P. Mulvey	12/21/2015

DOC-NOAA-2016-000807	Request Basil Scott	03/16/2016
DOC-NOAA-2016-000094	Request Josh Schopf	10/14/2015
DOC-NOAA-2014-001474	Request Eric Huber	08/12/2014
DOC-NOAA-2015-000190	Request Miyo Sakashita	11/02/2014
DOC-NOAA-2016-001743	Request John Greenewald	09/12/2016
DOC-NOAA-2017-000384	Request Marshall R. Morales	01/03/2017
DOC-NOAA-2017-000414	Request Arnold & Porter Kaye Scholer LLP	01/09/2017
DOC-NOAA-2016-001599	Request Machel R. Hall	08/12/2016
DOC-NOAA-2016-000192	Request John Ferro	11/03/2015
DOC-NOAA-2017-000790	Request Brian Gaffney	03/14/2017
DOC-NOAA-2017-001059	Request Richard Hirn	04/18/2017
DOC-NOAA-2017-001326	Request Hans Bader	06/07/2017
DOC-NOAA-2017-000768	Request Julio C. Gomez	03/10/2017
DOC-NOAA-2017-001487	Request John Greenewald	07/06/2017
DOC-NOAA-2017-001403	Request Robert Shuchman	06/20/2017
DOC-NOAA-2017-000058	Request Christopher T. Clack	10/13/2016
DOC-NOAA-2017-000034	Request Christopher T. Clack	10/11/2016
DOC-NOAA-2017-001565	Request Charles Seife	06/19/2017
DOC-NOAA-2017-001523	Request Brian L. Kahn	07/14/2017
DOC-NOAA-2017-000843	Request Benjamin Levitan	03/20/2017
DOC-NOAA-2017-001101	Request Ryan P. Mulvey	04/27/2017
DOC-NOAA-2017-001163	Request Jacqueline Iwata	05/05/2017
DOC-NOAA-2017-001483	Request Stanley Tromp	07/06/2017
DOC-NOAA-2017-000846	Request Elizabeth N. Moran	03/16/2017
DOC-NOAA-2017-000845	Request Elizabeth N. Moran	03/16/2017

Assigned To	Due	Days Backlogged
AGO	01/13/2017	121
AGO	10/08/2015	480
AGO	10/08/2015	480
AGO	07/31/2015	528
CAO	08/21/2017	12
LA	07/13/2017	39
NESDIS	07/07/2017	7
NESDIS	04/05/2017	108
NESDIS	03/29/2017	113
NESDIS	03/24/2017	116
NESDIS	01/14/2016	415
NMFS	08/30/2017	1
NMFS	08/11/2017	4
NMFS	09/14/2017	4
NMFS	08/30/2017	5
NMFS	07/21/2017	8
NMFS	08/14/2017	17
NMFS	08/10/2017	18
NMFS	06/22/2017	20
NMFS	07/28/2017	25
NMFS	08/01/2017	26
NMFS	07/28/2017	28
NMFS	08/02/2017	30
NMFS	07/26/2017	30
NMFS	09/08/2017	31
NMFS	07/25/2017	31
NMFS	07/21/2017	39
NMFS	07/13/2017	39
NMFS	09/15/2017	39
NMFS	07/03/2017	47
NMFS	07/03/2017	47
NMFS	07/03/2017	47
NMFS	06/30/2017	47
NMFS	05/16/2017	51
NMFS	08/16/2017	53
NMFS	06/20/2017	55
NMFS	06/20/2017	55
NMFS	05/09/2017	68
NMFS	05/08/2017	81
NMFS	05/09/2017	84
NMFS	04/06/2017	107
NMFS	01/13/2017	117
NMFS	02/03/2017	140
NMFS	01/05/2017	170
NMFS	12/30/2016	173
NMFS	07/20/2016	201
NMFS	10/28/2016	215
NMFS	10/27/2016	216
NMFS	10/14/2016	235
NMFS	05/25/2016	316
NMFS	02/04/2016	317

NMFS	05/04/2016	325
NMFS	02/18/2016	401
NMFS	09/10/2014	494
NMFS	12/05/2014	684
NOAA FOIA	10/13/2016	226
NOS	02/24/2017	9
NOS	03/07/2017	30
NOS	09/29/2016	211
NOS	12/04/2015	442
NWS	04/17/2017	24
NWS	05/19/2017	43
NWS	07/07/2017	43
NWS	04/12/2017	92
OAR	08/14/2017	17
OAR	07/25/2017	31
OAR	11/25/2016	57
OAR	11/09/2016	60
OC	08/30/2017	5
OC	08/16/2017	15
OC	04/25/2017	21
OGC	06/16/2017	57
OGC	06/16/2017	57
USEC	08/14/2017	17
USEC	04/18/2017	99
USEC	04/13/2017	102

Tracking Number	Type	Requester
DOC-NOAA-2017-001574	Request	Karen Markin
DOC-NOAA-2017-001573	Request	Karen Markin
DOC-NOAA-2017-001564	Request	Rose Santos
DOC-NOAA-2017-001563	Request	Rose Santos
DOC-NOAA-2017-001463	Request	Patrick Wardell
DOC-NOAA-2017-001261	Request	Laura E. Nielsen
DOC-NOAA-2017-000438	Request	Claudia Lucio
DOC-NOAA-2017-001753	Request	Dan Vergano
DOC-NOAA-2015-000295	Request	Office Administrator
DOC-NOAA-2016-001762	Request	Thomas Knudson
DOC-NOAA-2015-001860	Request	Delcianna Winders
DOC-NOAA-2017-001719	Request	Stephen Potts
DOC-NOAA-2017-001634	Request	Paul Achitoff
DOC-NOAA-2017-001613	Request	David B. Anderson
DOC-NOAA-2017-001610	Request	Janet Locke
DOC-NOAA-2017-001598	Request	David MacDonald
DOC-NOAA-2016-001479	Request	Christopher Hudak
DOC-NOAA-2017-001531	Request	Mara Shlackman
DOC-NOAA-2017-001481	Request	Ted Lund
DOC-NOAA-2017-001458	Request	Russ Kick
DOC-NOAA-2017-001442	Request	Chandra Taylor
DOC-NOAA-2017-001421	Request	Russ Kick
DOC-NOAA-2017-001482	Request	Robin McDowell
DOC-NOAA-2017-001412	Request	Daniel Seligman
DOC-NOAA-2016-001326	Request	Thomas Knudson
DOC-NOAA-2017-001381	Request	Margaret Townsend
DOC-NOAA-2017-001333	Request	Russ Rector
DOC-NOAA-2017-001279	Request	Jane Reldan
DOC-NOAA-2016-001214	Request	bruce weyhrauch
DOC-NOAA-2017-001238	Request	Dale Perkins
DOC-NOAA-2017-001230	Request	Maurice Tamman
DOC-NOAA-2017-001068	Request	Zeenat Mian
DOC-NOAA-2017-000940	Request	Elizabeth Zultoski
DOC-NOAA-2016-000604	Request	Margaret Townsend
DOC-NOAA-2016-000603	Request	Margaret Townsend
DOC-NOAA-2017-000615	Request	Russ Rector
DOC-NOAA-2017-000299	Request	Chris Hogan
DOC-NOAA-2017-000204	Request	Belinda Brannon
DOC-NOAA-2017-001742	Request	Vivian Wang
DOC-NOAA-2017-001733	Request	Andrea Noel
DOC-NOAA-2017-001661	Request	Molly Masterton
DOC-NOAA-2017-001527	Request	Russ Kick
DOC-NOAA-2017-001735	Request	Vicent C. Catania
DOC-NOAA-2017-001233	Request	Derek Miller
DOC-NOAA-2017-001161	Request	Karen MacDonald
DOC-NOAA-2015-000706	Request	Megan R. Wilson
DOC-NOAA-2017-001306	Request	Paula M. Rychtar
DOC-NOAA-2017-001055	Request	Richard Hirn
DOC-NOAA-2017-000912	Request	James Renaldi
DOC-NOAA-2017-000600	Request	Amanda Johnson
DOC-NOAA-2017-001461	Request	Michael Ravnitzky

DOC-NOAA-2017-000794 Request Jared E. Knicley
DOC-NOAA-2017-000917 Request James Renaldi
DOC-NOAA-2017-001538 Request Zachary Kopplin
DOC-NOAA-2017-001317 Request Chris Saeger
DOC-NOAA-2017-001079 Request Austin R. Evers
DOC-NOAA-2017-001007 Request Seth Borenstein
DOC-NOAA-2017-001436 Request Susan Swartz
DOC-NOAA-2016-001346 Request Tammy Murphy
DOC-NOAA-2017-001347 Request Alexander Rony

Requester Organization	Submitted	Received	Assigned To
	07/20/2017	07/20/2017	AGO
	07/20/2017	07/20/2017	AGO
FOIA GROUP INC	07/19/2017	07/19/2017	AGO
FOIA GROUP INC	07/19/2017	07/19/2017	AGO
	07/02/2017	07/03/2017	AGO
Riverside Technology, inc.	05/23/2017	05/24/2017	AGO
Brayton Purcell LLP	01/11/2017	01/11/2017	AGO
BuzzFeed News	08/10/2017	08/10/2017	NESDIS
Friends of Animals	11/21/2014	11/21/2014	NMFS
Center for Investigative Reporting	09/14/2016	09/15/2016	NMFS
Harvard Law School	09/04/2015	09/04/2015	NMFS
	08/21/2017	08/21/2017	NMFS
Earthjustice	08/01/2017	08/01/2017	NMFS
Cascadia Research Collective	07/28/2017	07/28/2017	NMFS
Ms.	07/27/2017	07/27/2017	NMFS
	07/24/2017	07/24/2017	NMFS
Environmental Advocates	07/20/2016	07/21/2016	NMFS
Law Offices of Mara Shlackman, P.L.	07/14/2017	07/14/2017	NMFS
Citizen	07/06/2017	07/06/2017	NMFS
	07/01/2017	07/03/2017	NMFS
5OUTHERN ENVIRONMENTAL LAW CENTER	06/28/2017	06/28/2017	NMFS
	06/25/2017	06/26/2017	NMFS
Associated Press	06/23/2017	06/23/2017	NMFS
	06/22/2017	06/23/2017	NMFS
Center for Investigative Reporting	06/21/2016	06/22/2016	NMFS
	06/13/2017	06/13/2017	NMFS
	06/05/2017	06/05/2017	NMFS
Seal Conservancy	05/27/2017	05/30/2017	NMFS
law office of bruce b weyhrauch llc	05/27/2016	05/27/2016	NMFS
	05/19/2017	05/19/2017	NMFS
Reuters	05/18/2017	05/18/2017	NMFS
	04/21/2017	04/21/2017	NMFS
Advocates for the West	04/03/2017	04/04/2017	NMFS
	02/10/2016	02/10/2016	NMFS
	02/10/2016	02/10/2016	NMFS
	02/07/2017	02/07/2017	NMFS
	11/30/2016	11/30/2016	NOAA FOIA
	11/21/2016	11/21/2016	NOAA FOIA
Natural Resources Defense Council	08/22/2017	08/22/2017	NOAA FOIA
National Archives	08/18/2017	08/18/2017	NOAA FOIA
Natural Resouces Defense Council	08/07/2017	08/07/2017	NOAA FOIA
	07/15/2017	07/17/2017	NOAA FOIA
Alliance of Communities for Sustainable Fisheries (ACSF)	06/09/2017	06/09/2017	NOAA FOIA
Saving Seafood	05/19/2017	05/19/2017	NOS
	05/04/2017	05/04/2017	NOS
The Hill newspaper	02/18/2015	02/18/2015	NOS
NOAA	06/05/2017	06/05/2017	NWS
National Weather Service Employees	04/17/2017	04/17/2017	NWS
Professional Aviation Safety Specialists	03/29/2017	03/29/2017	NWS
Massachusetts Institute of Technology	02/02/2017	02/02/2017	NWS
	07/02/2017	07/03/2017	OAR

Natural Resources Defense Council	03/14/2017	03/14/2017	OC
Professional Aviation Safety Specialists	03/30/2017	03/30/2017	OMAO
Government Accountability Project	07/18/2017	07/18/2017	USEC
Western Values Project	06/07/2017	06/07/2017	USEC
American Oversight	04/24/2017	04/25/2017	USEC
The Associated Press	03/31/2017	03/31/2017	USEC
	06/27/2017	06/28/2017	WMFO
	06/10/2016	06/10/2016	WMFO
MuckRock	06/01/2017	06/01/2017	WMFO

Perfected?	Due	Closed Date	Status	Dispositions
Yes	08/21/2017	08/07/2017	Closed	Request withdrawn
Yes	08/21/2017	08/07/2017	Closed	Request withdrawn
Yes	08/16/2017	08/31/2017	Closed	Full denial based on exemptions
Yes	08/16/2017	08/31/2017	Closed	Full denial based on exemptions
Yes	08/02/2017	08/02/2017	Closed	Partial grant/partial denial
Yes	06/22/2017	08/04/2017	Closed	Partial grant/partial denial
Yes	02/24/2017	08/16/2017	Closed	No records
Yes	09/22/2017	08/29/2017	Closed	No records
Yes	12/24/2014	08/14/2017	Closed	Partial grant/partial denial
Yes	11/10/2016	08/30/2017	Closed	Partial grant/partial denial
Yes	10/23/2015	08/14/2017	Closed	Full grant
Yes	09/19/2017	08/30/2017	Closed	No records
Yes	09/08/2017	08/24/2017	Closed	Full grant
Yes	08/25/2017	08/16/2017	Closed	Full grant
Yes	09/08/2017	08/24/2017	Closed	No records
Yes	08/23/2017	08/29/2017	Closed	No records
Yes	09/22/2016	08/10/2017	Closed	Partial grant/partial denial
Yes	08/16/2017	08/14/2017	Closed	Request withdrawn
Yes	08/14/2017	08/17/2017	Closed	Full grant
Yes	08/02/2017	08/03/2017	Closed	Full grant
Yes	08/11/2017	08/14/2017	Closed	Partial grant/partial denial
Yes	08/14/2017	08/24/2017	Closed	Partial grant/partial denial
Yes	08/11/2017	08/29/2017	Closed	Other - Publicly available information
Yes	08/17/2017	08/07/2017	Closed	Full grant
Yes	07/26/2016	08/15/2017	Closed	Full denial based on exemptions
Yes	08/11/2017	08/10/2017	Closed	Partial grant/partial denial
Yes	07/10/2017	08/03/2017	Closed	All records referred to another agency
Yes	06/28/2017	08/08/2017	Closed	Fee-related reason
Yes	07/31/2017	08/14/2017	Closed	Partial grant/partial denial
Yes	07/12/2017	08/30/2017	Closed	Full grant
Yes	07/07/2017	08/29/2017	Closed	Full grant
Yes	06/01/2017	08/11/2017	Closed	Partial grant/partial denial
Yes	09/01/2017	08/24/2017	Closed	Partial grant/partial denial
Yes	03/15/2016	08/15/2017	Closed	Request withdrawn
Yes	03/15/2016	08/15/2017	Closed	Request withdrawn
Yes	03/15/2017	08/07/2017	Closed	Full grant
Yes	01/13/2017	08/31/2017	Closed	Other - Publicly available information
Yes	12/30/2016	08/09/2017	Closed	No records
No	TBD	08/24/2017	Closed	Duplicate request
Yes	09/19/2017	08/22/2017	Closed	Other - Request opened in error
No	TBD	08/21/2017	Closed	Duplicate request
Yes	08/16/2017	08/31/2017	Closed	Full grant
Yes	09/18/2017	08/23/2017	Closed	Duplicate request
Yes	06/22/2017	08/29/2017	Closed	Other - Admin close - no response from requester
Yes	06/16/2017	08/30/2017	Closed	Other - Admin close - no response from requester
Yes	10/13/2015	08/17/2017	Closed	No records
Yes	07/03/2017	08/17/2017	Closed	Full grant
Yes	05/17/2017	08/28/2017	Closed	Partial grant/partial denial
Yes	05/08/2017	08/01/2017	Closed	Full grant
Yes	03/28/2017	08/28/2017	Closed	Partial grant/partial denial
Yes	08/02/2017	08/29/2017	Closed	Full grant

Yes	04/17/2017	08/08/2017	Closed	No records
Yes	05/08/2017	08/08/2017	Closed	Full grant
Yes	08/16/2017	08/29/2017	Closed	No records
Yes	07/07/2017	08/08/2017	Closed	Full grant
Yes	06/16/2017	08/17/2017	Closed	Full grant
Yes	05/09/2017	08/08/2017	Closed	Partial grant/partial denial
Yes	08/11/2017	08/21/2017	Closed	Full denial based on exemptions
Yes	08/31/2016	08/09/2017	Closed	Request withdrawn
Yes	07/11/2017	08/10/2017	Closed	Full grant

Detail

Funded proposal: NA11OAR4600071: OAR Office of Ocean Exploration and Research (OER) - 07/01/2011 - 06/30/2011
Funded grant proposal: NA07OAR4600490: Archaeological and Oceanographic Exploration of the Sea of Crete and the Aegean Sea [FGI 53605] Relevant to DOCAB133F14CQ0018, we seek the contractor's proposal (or Statement of Qualifications [FGI 53604] Relevant to DOCAB133F14CQ0017, we seek contractor's proposal (or statement of qualifications) for the following:
I would like copies of all grant proposals and grant progress reports submitted by the Hawaii Marine Mammal Alliar
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SC
We are trying to obtain some records relating to the construction of a Survey ship that was built for the National Oc
Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of any ag
I request all records considered by the National Marine Fisheries Service (?NMFS?) in determining that the queen
Copies of all National Marine Fisheries Service documents, including but not limited to emails, investigative reports
The requester had agreed to amend her request to exclude personal private information, such as such as SSN, DC
Data requested: All data pertaining to Northeast Monitoring and Assessment Program (NEAMAP) trawl survey (2009-2010)
Please provide 2016 bigeye tuna catch data, which has not yet been published at <https://pifsc-www.irc.noaa.gov/wq>
Please provide the positions (lat and lon) of false killer whale interactions with the Hawaiian longline fishery that ha
Under the Freedom of Information Act, I am requesting any and all information you have regarding any upcoming t
I'm looking for any documents which make reference to the fast-food chain McDonald's and its product known as e
Note: all requests set forth below are for documents generated on or after January 1, 2009 through the date that NI
All documents relating to the mass stranding of nearly 100 false killer whales (*Pseudorca crassidens*) near Hog Ke
An electronic version of the complete Marine Mammal Inventory for Seaworld Parks and Entertainment.
I hereby request all completed Marine Mammal Authorization Program: Mortality/Injury Reporting Forms that have |
Pursuant to the Freedom informational Act (5 U.S.C. § 552), the Southern Environmental Law Center ("S
According to the document "Vessel Strike Avoidance Measures and Reporting for Mariners" from NMF:
Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request the following information: Comn
All e-mails (including attachments) between the NOAA Fisheries office in Portland, Oregon, and the Fish Passage
All emails and hard-copy communications (including attachments) directed to NMFS Office of Law Enforcement Di
The Center requests from the National Marine Fisheries Service ("NMFS") from January 1, 2015 to May 1, 2017: al
Attached is an 1989 nmfs mmir. please send me all the necropsy's for all animals listed with a "YES" ur
All correspondence (emails, letters, documents) dated between April 1, 2016 and May 27, 2017, composed or rece
Please provide copies of the following documents (including emails and letters): • All communications and docume
I would like some socio-economic data for a racial composition study. Please provide the racial/ethnicity of the folk
This request relates to the Vessel Monitoring System (VMS) that is maintained by the National Marine Fisheries Se
Under the Freedom of Information Act I would like to request the following: All communications inter office (within N
1. Any Endangered Species Act ("ESA") section 7 consultations or draft consultations regarding the effects of the Y
1. All records related to: Interagency Cooperation: Endangered Species Act – Incidental Take Statements, Docket
Critical Habitat Rulemaking and Policy 1. All records related to: Interagency Cooperation—Endangered Species Ac
Please send me all information on record for each BDTTLENOSE OOLPHIN - TURSIOPS TRUNCATUS listed on
Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of the folk
Fishing Trawler Lady Julie Documentation No. : 1089342 Incident: All documentation related to this incident report
Please see attached.

NARA is aware of an alleged unauthorized disposition of NOAA records based on a new article published in the De
Please produce all records in the Department's possession, custody, or control that support, explain, or otherwise r
I am requesting all previously released FOIA logs, covering any time period from 2000 to the present. This refers to
Copies of all internal/external communications concerning and regarding propose wave or wind energy projects off
Saving Seafood seeks any correspondence between staff of NOAA's office of National Marine Sanctuaries and sta
Please provide the following from NOAA Office of Response and Restoration, regarding the Carla Maersk/Conti Pe
I request that I be sent copies of the following documents or, if there is a large number, be permitted to inspect the
Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of: I am s
1. A copy of all contracts for services between the agency and Joseph Swerdzewski and Associates, LLC., for serv
Requester clarified request: Organization titles, position titles and/or occupational series, and bargaining unit code
1. All correspondence between the Service and representatives of the Executive Office of the President of the Unit
A digital/electronic copy of the NOAA Library Subject Guide to MARINE DEBRIS, subject guide 1989-03, dated Oc

Please produce records of the following types in NOAA's possession, custody or control: 1. All records setting forth Requester clarified request: Organization titles, position titles and/or occupational series, and bargaining unit code Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I am requesting any and all documents, including I request access to and copies of documents addressed or directed to the President of the United States that include 1. Any memoranda, policies, rules, protocols, restrictions, directives, guidance, or other guidelines addressing the request. • From Jan. 20, 2017 to March 29, 2017, all emails to or from Troy Wilds with the phrases "climate change", "global Investigation on NOAA Ship Fairweather into a pattern of harassment in the Steward Dept. February through April I wish to obtain any and all documents related to the position at both the ZP III and ZP IV band levels. This includes A list of the vacant positions that the National Oceanic and Atmospheric Administration cannot fill due to the president

07/2012: \$3,400,000.00 Project Title: Exploring New Frontiers in Ocean Exploration. Awarded to SEA RESEARCH FOUNDATION, INC. 07/01/2007 06/30/2008 \$1,300,000.00 for the IDIQ contract. Not a proposal for a specific task under the IDIQ. With pricing if possible. Without this IDIQ contract. Not for a specific task, rather for the IDIQ contract itself. * contract * SOW/PWS

Task Order 0003, Task Order 0005, AND Task Order 0006 awarded to the National Oceanic and Atmospheric Administration in 1960 at National Steel and Ship Building Corp (Nassco now part of Nucor). Agency communications to, or from, Dr. John Bates regarding the 2015 Karl et al study in Science magazine regarding the conch (Strombus gigas) does not warrant listing under the Endangered Species Act (?ESA?). Please provide any reports and memos, pertaining to the death of U.S. observer Josh Shelton in March 2016.

Job, address (including UPS/USPS/FedEx, etc. tracking numbers) in all responsive records/documents. (1996-present). All data fields also contained in the parallel SEAMAP-SA-GOM and NEFSC surveys. All tracking information for yellowfin/hi/Data/Pelagic/hpel7.htm. This includes bigeye tuna catch, by pound, for longline, MHI troll, MHI trawl, etc. All have been recorded by the observer program. This information will be included in a map for publication to illustrate the transfers of dolphins, walrus, seals, or sea lions in and/or out of Six Flags Discovery Kingdom in Vallejo, California. For context, the Canadian subsidiary recently said it would like to see the MFS responds to this request. 1. Any reports, memoranda, correspondence, or other documents (including but not limited to) in southwest Florida in January 2017. This request includes documents generated and received by NMFS

been sent to NMFS to from January 1, 2017, to present. Information about this form is here: <http://www.fishbase.org/SELC> requests the following for the Kerr-McGee Chemical Corp. site: The full attendance list, agency communications, and all correspondence between, from, to, or with any NMFS employee and/or agent and any memorandum right column stating necr filed with nmfs

received by the National Marine Fisheries Service, West Coast Region, in which "Children's Pool" requests the following for the Kerr-McGee Chemical Corp. site: The full attendance list, agency communications, and all correspondence between, from, to, or with any NMFS employee and/or agent and any memorandum right column stating necr filed with nmfs

1. Red Snapper IFQ share holders. 2. IFQ dealers. 3. Charterboat/Headboat service, Office for Law Enforcement and managed by Kelly Spalding (kelly.spalding@noaa.gov/301.427.8100) and intra office (between NOAA and external sources/entities) where the following message from the Yakima Project, the YRBWEP, or the YBIP, or any federal projects or actions taken pursuant to the Yakima Project. NOAA_FRDOC_0001-3430

Definition of Destruction or Adverse Modification of Critical Habitat, Docket No. 15-0246, the attached document.

Following document, the Agency Fact Sheet/Brochure or a similar document providing a description or overview of the vessel and documentation to confirm whether or if this vessel sank.

Daily Caller News Foundation on July 6, 2017. Cause of Action Institute (CoA) believes that "NOAA might be able to provide information regarding the Secretary of Commerce's (Secretary's) decision dated July 10, 2017, and final notice published on July 10, 2017. This request includes, but is not exclusive of, any policy-development or other information of the National Marine Sanctuary Foundation (<https://www.marinesanctuary.org/>) regarding the Monte Pelic ship collision of 3/9/2015 in the Houston Ship Channel: 1- Fate and transport forecast for both the vessel and the cargo. 2- A copy of any and all communications and drafts, regarding the national interest concerning the job announcement (if there was one) for National Weather Service Voluntary Observing Ship positions to the National Weather Service, including statements of work, and such elements of those contracts for current positions. Note: NOT employees, but positions. Please see Correspondence - Other documents for the President, and/or those purporting to contact the Agency on behalf of the President, created between 1989 and 2017, mentioned on this page: <http://library.noaa.gov/Research-Tools/Subject-Guides> This is an

general policy or guidance for NOAA staff to apply when determining whether to remove information, documents for current positions. Note: NOT employees, but positions. See Correspondence - Other
), but not limited to, notes, e-mails, memos, or any other materials concerning pledges, oaths, requests
de recommendations regarding monument designation for the National Monuments listed below, during
provision of information to representatives of the press or media by employees of NOAA (including but not
il warming", "greenhouse gases", "carbon dioxide" or "Paris Agreement."

of 2017

s, but is not limited to, the entire job opportunity announcement file from which I was first appointed and
ent's hiring freeze. Please include the job title, GS level, office, and division.

SEARCH FOUNDATION, INC

30,000.00

at pricing if not.

warded to I.M. Systems Group, Inc. (IMSG). ----- We
rt of General Dynamics). Under the Freedom of Information Act, we would like to obtain these documen
re (see <http://science.sciencemag.org/content/348/6242/1469>) from February 4, 2017 to present date. I
rovide all records in your possession, whether received, created, and/or distributed by NMFS, that the a

OLE agents names and other exempted information (i.e. pounds of catch) are redacted as non-responsi
wl, environmental, and station data, including comparison and other associated trawls/cruises. Data field
handline, and offshore handline fishers.

help define the home range of the pelagic false killer whale stock beyond what we know from satellite ta
CA Please provide where these mammals are coming from and going to, what their names are, and wh
ould not sell the product this year due to high lobster prices in Canada - and there is speculation McDor
ing electronic mail messages) concerning any Endangered Species Act ("ESA") section 7 consultations
/MFS. In addition to documents which pertain to the incident itself, we are also seeking subsequent docur

nmfs.noaa.gov/pr/interactions/mmap/ Further, I ask that these documents be sent to me in any digital fo
enda and handouts for the public meeting held by the Navassa Trustee Council, in Navassa, regarding t
m" must be filed. [http://sero.nmfs.noaa.gov/protected_resources/section_7/guidance_docs/documen
nt. I would like to receive the information in electronic format.

he Snake River (including the fish transportation program, in-river passage, project spill and project by-p
g to Keith Davis, an American fisheries observer who disappeared at sea last year, along with Mr. Landc
ber and/or agent of the California Department of Fish and Wildlife mentioning, including, and/or referen

t; appears in the correspondence.

nerce and any representative of any of the Northwest United States Treaty Tribes that are subject to the
eef fish and pelagic fish permit holders. 4. Headboard Pilot Program Participants 5. IFQ Gulf Reef Fish /
269). I am requesting a duplicate copy of the statutorily permitted VMS data which includes latitude, long
i Marjorie Zoll is included, from 1st March 2015 until present: 1. "Hi David, I just sent the webpage
a Project, the YRBWEP, or the YBIP, on threatened or endangered species or their critical habitat. Wild

NOAA-NMFS-2014-0093-0001. 2. All records related to: Policy Regarding Implementation of Section 4(
view of the Agency. I would like to receive the information in a PDF document or Word document.

be illegally destroying records of a recent Management Council meeting discussing regulations against t
hed on July 20, 2017, determining that the state of New Jersey was in compliance with regard to manag
est; proactive release; etc. I ask that these logs include fields indicating the subject and the disposition o
discussions for these types of energy projects, and/or discussions of the fiscal implications to the nator
rey Bay National Marine Sanctuary. We are also seeking any correspondence between staff of NOAA's
MTBE air plume and MTBE contaminated water 2- The human health hazard assessment of the MTBE
etermination about the Keystone XL pipeline required in Executive Order 13337 -- including, but not limi
Program Manager (VOS PM). This position was vacant for quite some time and hiring of a particular inc
ts which reveal the price or costs of the services being provided. We understand that this contract or the

ied between January 20, 2017 and January 27, 2017, and concerning the operation of the Service's soci
individual noncommercial request.

ocuments, or webpages from a NOAA website. 2. All records from January 20, 2017 through the present

or agreements, oral or written, not to disclose information or documents, or pledges, oaths, requests or :
the specified time periods: Northeast Canyons and Seamounts 3/15/2016 to 9/15/2016 Papahānaumoku
ot limited to responses to requests for information or other communication). This request includes any si

the original ratings and rankings. It includes the following certificates that are referenced on my selector

[REDACTED]

are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCD
its 1. All Insurance Certificates or any other documents identifying the liability insurance carrier or insura
would like to receive the information in electronic form, preferably a searchable PDF or in XML format. N
gency considered in making the initial positive 90-day finding on the petition as well as the final not warr

ive as well per agreement with GCES. Should there be an appeal, proper exemptions will be applied by i
ds for each trawl include, but not limited to: 1) Biological: a. Species ID (all taxa) b. All counts/biomass/le

gged animals.

en the expected transfers will be made.

nald's may bring the product back using "cheaper" American lobster. Please limit to records 1
(16 U.S.C. § 1536) that have been initiated or proposed, including Biological Opinions, Biological Asses
ments which relate to the cause of the mass beaching – including those which speculate as to cause. Fo

rmats in which they exist. Under the terms of the E-FOIA Amendments of 1996, Section 5, if a documen
the Natural Resource Damage Assessment process.

nents/copy_of_vessel_strike_avoidance_february_2008.pdf] I hereby request all completed forms that h

ass). The FPC is a contractor of the Bonneville Power Administration.

n's and Mr. Gregory's responses. I am making this request on behalf of Reveal News and the Center fo
cing whales and/or sea turtles entangled and/or possibly entangled in fishing gear on the U.S. West Coa

US Canada Salmon Treaty. • All communications and documents from January 1, 2015 to date that we
Account Shareholders Additionally please provide the average weight of red snapper caught by the comi
titude, and date for all commercial vessels sailing from Atlantic ports for as far back as data is available.
(http://himonkseal.wix.com/himonkseal) the following message... " 2 "I will attempt to contac
Fish Conservancy only requests records described in this paragraph that were created or obtained after

b)(2) of the Endangered Species Act, Docket No. FWS-R9-ES-2011-0104-0026.

the fishing industry. " The discussed new rules, " compel fisherman to pay for supplemental a
ement of its recreational summer flounder fishery under the Atlantic Coastal Fisheries Cooperative Man
f the requests. Further, I request that these files be sent in any digital formats in which they exist (PDF, I
ial marine sanctuary program, or to individual sanctuary sites, and discussions about the Chumash Nati
office of National Marine Sanctuaries and the California Marine Sanctuary Foundation (http://www.califo
air exposure 3 - The environmental impact analysis report of the MTBE air release.

ited to, the final comments. Please include communications between the Office of the Secretary of the C
dividual was discussed to have started around November 2016 and the actual date of hire was advertise
ese contracts are associated with the National Weather Service's collective bargaining with the National

ial media accounts. 2. Any documents or materials, including but not limited to, guides, manuals, handbc

t instructing NOAA staff within the Office of Communications to remove specific information, documents

agreements, oral or written, having to do with loyalty, allegiance, or similar concepts, made to the President
Hawaii 2/26/2016 to 8/26/2016 Pacific Remote Islands 3/25/2014 to 9/25/2014 Marianas Trench 7/06/2014
such directives or guidance issued internally by NOAA or issued to NOAA by the White House or any other

1 memo: 0096-DE-3, 0096-DE-4 and 0095-MAP-3. It also includes copies of any emails regarding the se

G133E12CQ0021 Task Order 0003 awarded to I.M. Systems Group, Inc. (IMSG).
nce coverage for M. SLAYEN ("M. SLAYEN" shall refer to M. Slayen & Associates, Mor
ly understanding is he retired recently but it has not occurred to me that he might have sent more email
anted 12-month finding with respect to the Queen conch. This request includes any documents, writings

me to the agents names as (b)(7)(C) vice non-responsive and catch info as (b)(4).
ngths (including subsamples) 2) Temporal: a. Date b. Time 3) Station: a. Beginning/end latitude/longitud

from June 1, 2017 to present.
sments, or informal consultations, pertaining to the implementation of the National Flood Insurance Prog
r reference, this incident has been the subject of a Miami Herald article, in which you were quoted, at th
it exists in electronic format, it must be released in that format upon request.

ave been sent to NMFS, including all regional offices, from January 1, 2017, to present. Further, I ask th

r Investigative Reporting, a non-profit news media outlet in California, for an article about Keith Davis an
ist.

re sent to or received by any employee of the US Department of Justice and any representative of the U
mercial sector and the average weight of red snapper caught by the recreational sector. This email addr
. I am also requesting a summary of all commercial fishing vessels that should include a count of those v
t Ms. Mian in person to resolve the situation amicably"
January 1, 2000. 2) Any correspondence with BOR concerning the Yakima Project, the YRBWEP, o

t-sea monitoring services, which would have a disastrous effect on America 's fishing industry.- NARA is
agement Act (ACFCMA), 16 U.S.C. Secs 5101-5108 (2012). For the period on or after February 2, 2017
Excel, Word, etc.). Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists
onal Marine Sanctuary nomination as it might relate to future wave or wind energy projects. **See attach
rniamfsf.org/index.html) regarding the Monterey Bay National Marine Sanctuary. We are looking for corre

ommerce Department and the State Department between January 1, 2014 and February 2, 2015 about
d that this person, Michael Potochney, started on February 6, 2017. I don't believe this job vacancy was
Weather Service Employees Organization, and that services are still being provided. It is unknown whet

ooks, policies, or presentations used to instruct or train Service personnel in the use of its public-facing T

; or webpages from any NOAA website. In this request, the term "records" means anything denoted by t

lent, the Vice President, the Office of the President or the Office of the Vice President, or any individual \n 008 to 1/06/2009 Rose Atoll 7 /06/2008 to 1/06/2009 This should include, but is not limited to, copies of
ar office. 2. Any memoranda, policies, rules, protocols, restrictions, directives, guidance, or other gu

election and hiring for this position. I am also requesting copies of all emails between NOAA Workforce I

Black redaction bar at the top of the page.

rie Slayen aka Morris Slayen, an insulation subcontractor
in after his retirement.
; materials, c

de b

rogram ("NFIP") by the Federal Emergency Management Agency
e following URL: <http://www.miamihher.com>

that these documents be sent to me in any digital format.

and fisheries observers.

US Department of Justice related to the US Canada Salmon
ess will be fine for the record.
/

is requesting
' (Please see original request for additional information)
is in electronic format, it must be submitted in
red letter for detailed description.
espondence sent or received between January 2010 and
February 2011.

the Keystone XL pipeline project.
advertised and thus not open to all qualified applicants
ther the government contracting process.

Twitter account

the use of th

working in the White House or the W
memoranda from the NOAA Administrator or their

Management, OPM and t



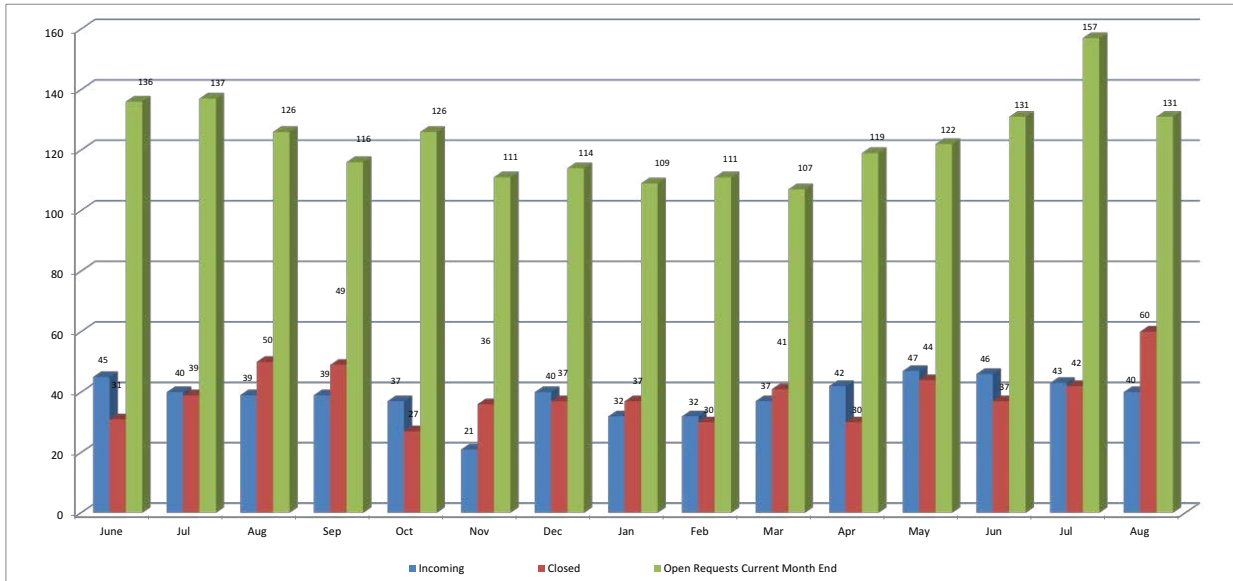




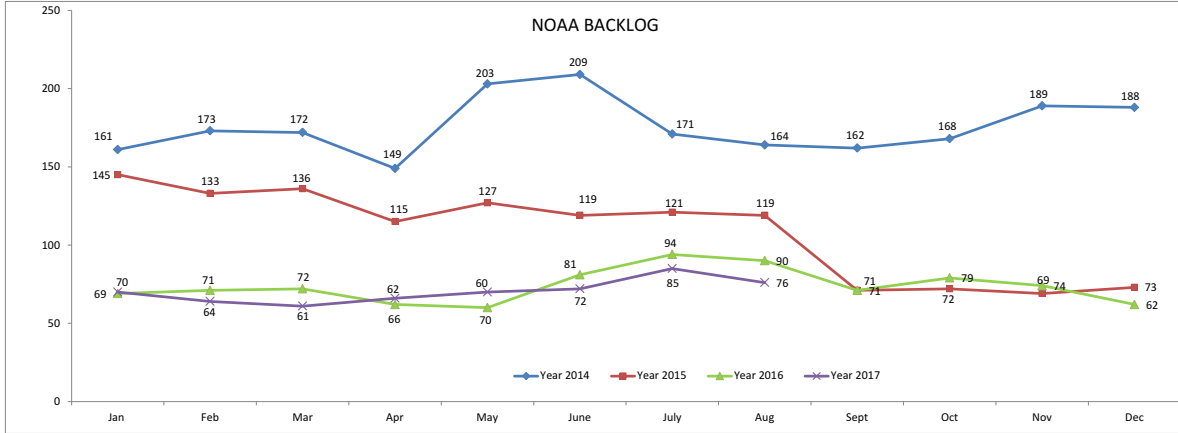
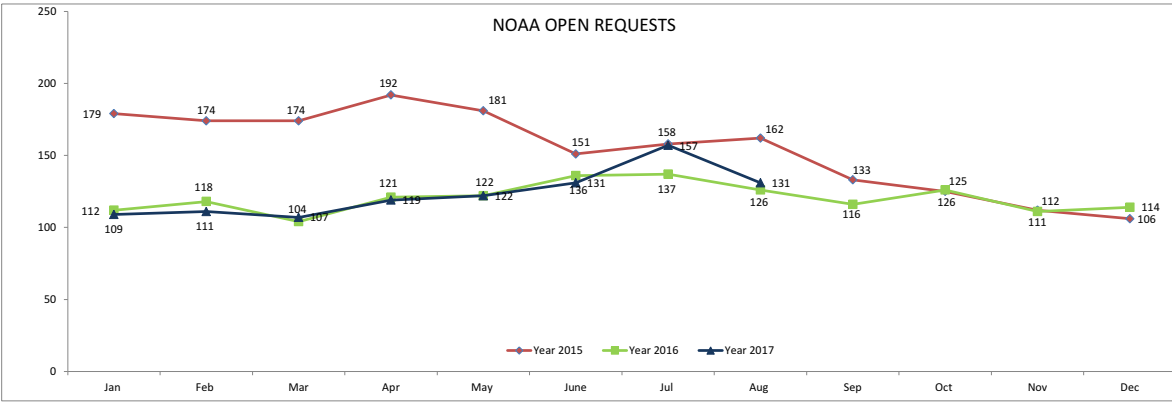


FOIA Monthly Status Report 08-31-2017

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	10	0	7	4	0	1	3	4
CAO	1	0	0	1	1	0	0	1
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	0	0	0	0	0
CIO/FOIA	9	6	7	2	0	1	0	1
GC	2	1	0	3	2	0	0	2
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	5	3	1	7	4	0	1	5
NMFS	86	14	28	73	31	10	3	44
NOS	10	6	3	14	2	1	1	4
NWS	7	2	4	5	4	0	0	4
OAR	7	2	1	8	4	0	0	4
OMAO	1	0	1	0	0	0	0	0
OC	4	0	1	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	8	5	4	8	3	0	0	3
WFMO	4	1	3	2	0	0	0	0
NOAA Totals	157	40	60	131	55	13	8	76

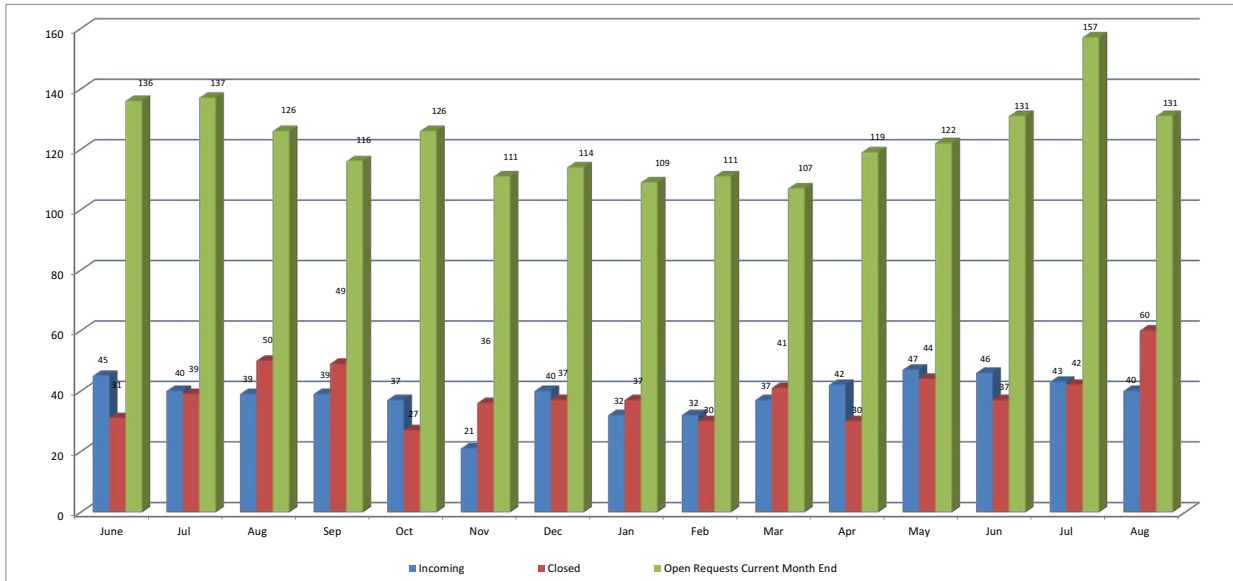


FOIA Monthly Status Report 08-31-2017

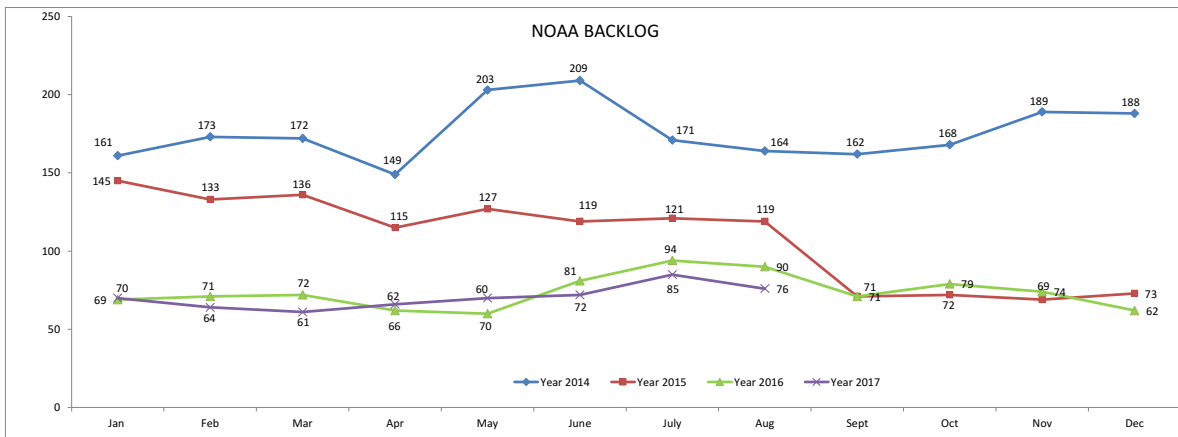
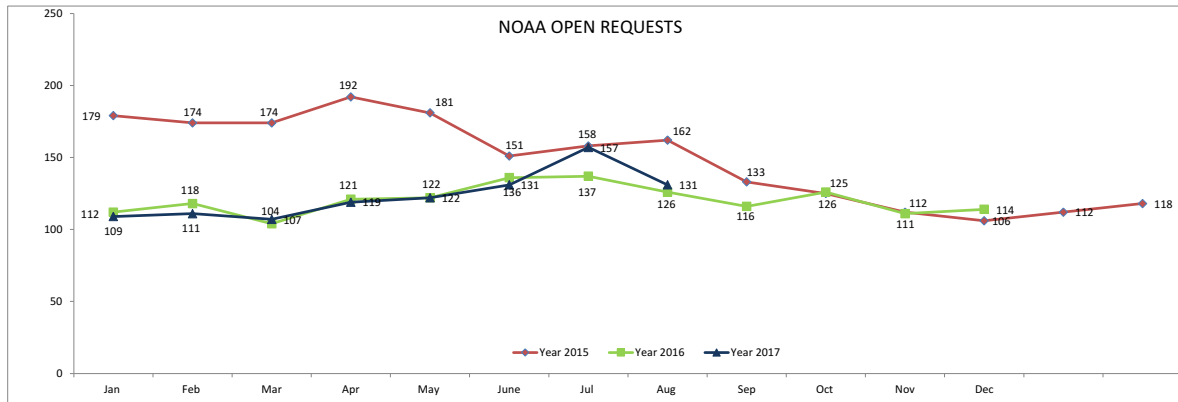


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Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
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CAO	1	0	0	1	1	0	0	1
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	0	0	0	0	0
CIO/FOIA	9	6	7	2	0	1	0	1
GC	2	1	0	3	2	0	0	2
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	5	3	1	7	4	0	1	5
NMFS	86	14	28	73	31	10	3	44
NOS	10	6	3	14	2	1	1	4
NWS	7	2	4	5	4	0	0	4
OAR	7	2	1	8	4	0	0	4
OMAO	1	0	1	0	0	0	0	0
OC	4	0	1	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	8	5	4	8	3	0	0	3
WFMO	4	1	3	2	0	0	0	0
NOAA Totals	157	40	60	131	55	13	8	76



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Tracking Number	Type	Requester
DOC-NOAA-2017-001753	Request	Dan Vergano
DOC-NOAA-2017-001670	Request	Kathleen Casey
DOC-NOAA-2017-001646	Request	Douglas Mackenzie
DOC-NOAA-2017-001765	Request	Jill Riepenhoff
DOC-NOAA-2017-001743	Request	Zeenat Mian
DOC-NOAA-2017-001741	Request	Vivian Wang
DOC-NOAA-2017-001729	Request	Robert Boesch
DOC-NOAA-2017-001719	Request	Stephen Potts
DOC-NOAA-2017-001681	Request	Santiago Beach
DOC-NOAA-2017-001647	Request	Ingrid N. Visser
DOC-NOAA-2017-001645	Request	Teresa Marshall
DOC-NOAA-2017-001643	Request	Sarah B. Brady
DOC-NOAA-2017-001642	Request	Lisa Demer
DOC-NOAA-2017-001634	Request	Paul Achitoff
DOC-NOAA-2017-001641	Request	Brian A. Knutsen
DOC-NOAA-2017-001630	Request	Andrew Ogden
DOC-NOAA-2017-001710	Request	Rick Steiner
DOC-NOAA-2017-001798	Request	Brett Sommermeyer
DOC-NOAA-2017-001796	Request	Margaret Townsend
DOC-NOAA-2017-001742	Request	Vivian Wang
DOC-NOAA-2017-001733	Request	Andrea Noel
DOC-NOAA-2017-001661	Request	Molly Masterton
DOC-NOAA-2017-001677	Request	Robert C. Stober, Esq.
DOC-NOAA-2017-001782	Request	Christine M. Walker
DOC-NOAA-2017-001763	Request	Christopher M. Hannan
DOC-NOAA-2017-001758	Request	Cristin Krachon
DOC-NOAA-2017-001745	Request	Michael Ravnitzky
DOC-NOAA-2017-001676	Request	Vincent C. Catania
DOC-NOAA-2017-001678	Request	James Zeiler
DOC-NOAA-2017-001757	Request	Jacob Holle
DOC-NOAA-2017-001731	Request	Leah Pransky
DOC-NOAA-2017-001691	Request	David Kovar
DOC-NOAA-2017-001680	Request	Robert Shuchman
DOC-NOAA-2017-001692	Request	William S. Walker
DOC-NOAA-2017-001756	Request	Jeff Tollefson
DOC-NOAA-2017-001739	Request	Lauren N. Evans
DOC-NOAA-2017-001734	Request	Andrew C. Revkin
DOC-NOAA-2017-001722	Request	Michael Ravnitzky
DOC-NOAA-2017-001635	Request	Russ Kick
DOC-NOAA-2017-001760	Request	John Harding

Requester Organization	Submitted	Received	Assigned To
BuzzFeed News	08/10/2017	08/10/2017	NESDIS
American Bridge 21st Century	08/08/2017	08/08/2017	NESDIS
	08/03/2017	08/03/2017	NESDIS
Raycom Media	08/25/2017	08/25/2017	NMFS
	08/22/2017	08/22/2017	NMFS
Natural Resources Defense Council	08/22/2017	08/22/2017	NMFS
University of Hawaii at Manoa	08/21/2017	08/21/2017	NMFS
	08/21/2017	08/21/2017	NMFS
	08/10/2017	08/10/2017	NMFS
Orca Research Trust	08/04/2017	08/04/2017	NMFS
PETA Foundation	08/03/2017	08/03/2017	NMFS
Delaware Riverkeeper Network	08/03/2017	08/03/2017	NMFS
Alaska Dispatch News	08/02/2017	08/02/2017	NMFS
Earthjustice	08/01/2017	08/01/2017	NMFS
Wild Fish Conservancy c/o Kampmeier & Knutsen PLLC	08/01/2017	08/01/2017	NMFS
Turtle Island Restoration Network	08/01/2017	08/01/2017	NMFS
Oasis Earth	08/01/2017	08/01/2017	NMFS
	08/31/2017	08/31/2017	NOAA FOIA
Center for Biological Diversity	08/31/2017	08/31/2017	NOAA FOIA
Natural Resources Defense Council	08/22/2017	08/22/2017	NOAA FOIA
National Archives	08/18/2017	08/18/2017	NOAA FOIA
Natural Resources Defense Council	08/07/2017	08/07/2017	NOAA FOIA
Hershoff, Lupino & Yagel, LLP	08/07/2017	08/07/2017	NOAA FOIA
Fowler White Burnett	08/29/2017	08/29/2017	NOS
Baker Donelson	08/24/2017	08/24/2017	NOS
Geosyntec Consultants	08/24/2017	08/24/2017	NOS
	08/22/2017	08/22/2017	NOS
	08/09/2017	08/09/2017	NOS
Citizens for Responsible Zoning and Landowner Rights	08/07/2017	08/07/2017	NOS
Physical Optics Corporation	08/24/2017	08/24/2017	NWS
Keker, Van Nest & Peters LLP	08/21/2017	08/21/2017	NWS
	08/10/2017	08/10/2017	OAR
MTRI, MTU	08/09/2017	08/09/2017	OAR
	08/10/2017	08/10/2017	OGC
Nature	08/24/2017	08/24/2017	USEC
	08/22/2017	08/22/2017	USEC
ProPublica	08/21/2017	08/21/2017	USEC
	08/21/2017	08/21/2017	USEC
	08/02/2017	08/02/2017	USEC
Martin Kane & Kuper	08/16/2017	08/16/2017	WFMO

Perfected?	Due	Closed Date	Status	Dispositions
Yes	09/22/2017	08/29/2017	Closed	No records
Yes	09/19/2017	TBD	Assignment Determination	
Yes	09/08/2017	TBD	Assignment Determination	
Yes	09/27/2017	TBD	Assignment Determination	
Yes	09/22/2017	TBD	Assignment Determination	
Yes	09/22/2017	TBD	Assignment Determination	
Yes	09/19/2017	TBD	Assignment Determination	
Yes	09/19/2017	08/30/2017	Closed	No records
Yes	09/19/2017	TBD	Research Records	
Yes	09/12/2017	TBD	Assignment Determination	
Yes	09/08/2017	TBD	Research Records	
Yes	09/08/2017	TBD	Research Records	
Yes	09/22/2017	TBD	Assignment Determination	
Yes	09/08/2017	08/24/2017	Closed	Full grant
Yes	09/22/2017	TBD	Assignment Determination	
Yes	09/08/2017	TBD	Assignment Determination	
Yes	09/15/2017	TBD	Assignment Determination	
No	TBD	TBD	Initial Evaluation	
No	TBD	TBD	Assignment Determination	
No	TBD	08/24/2017	Closed	Duplicate request
Yes	09/19/2017	08/22/2017	Closed	Other - Request opened in error
No	TBD	08/21/2017	Closed	Duplicate request
Yes	09/19/2017	TBD	Assignment Determination	
Yes	09/27/2017	TBD	Assignment Determination	
Yes	09/27/2017	TBD	Assignment Determination	
Yes	09/27/2017	TBD	Assignment Determination	
Yes	09/22/2017	TBD	Assignment Determination	
Yes	09/19/2017	TBD	Assignment Determination	
Yes	09/18/2017	TBD	Assignment Determination	
No	TBD	TBD	Assignment Determination	
Yes	09/19/2017	TBD	Assignment Determination	
Yes	09/19/2017	TBD	Assignment Determination	
Yes	09/19/2017	TBD	Assignment Determination	
Yes	09/19/2017	TBD	Assignment Determination	
Yes	09/19/2017	TBD	Assignment Determination	
Yes	09/22/2017	TBD	Assignment Determination	
Yes	09/20/2017	TBD	Assignment Determination	
Yes	09/20/2017	TBD	Assignment Determination	
Yes	09/19/2017	TBD	Assignment Determination	
Yes	09/08/2017	TBD	Assignment Determination	
Yes	09/22/2017	TBD	Assignment Determination	

Detail

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of any agency Incoming-And-Outgoing Correspondence Between The National Centers for Environmental Information And The Chief of NOAA: I request copies of records under the Freedom of Information Act (5 U.S.C. 552) containing data that I am seeking the database of the Marine Mammal Inventory Report compiled by the National Marine Fisheries Service Under the Freedom of Information Act I would like to request all the information listed below inter agency (within NOAA) Please produce records of the following types in the possession, custody, or control of the National Oceanic and Atmospheric Administration: Records of all cetacean stranding events in the main Hawaiian Islands - Kauai, including Niihau, Oahu, Maui, Molo Data requested: All data pertaining to Northeast Monitoring and Assessment Program (NEAMAP) trawl survey (2008-2012) I am currently undertaking a project regarding the survival of marine mammals in Captivity. I would love to be able to apply for an Marine Mammal Inventory Report (MMIR) which includes all living and dead captive orca, list the most recent MMIR.

Any and all requests for technical assistance for projects or initiatives that would impact the Atlantic sturgeon in the United States Please provide the letter of advisement sent by NOAA to the Alaska villages of Toksook Bay and Nightmute regarding the 2016 bigeye tuna catch data, which has not yet been published at <https://pifsc-www.irc.noaa.gov/wq> Please provide copies of all documents generated, created, modified, received, submitted, and/or issued by NOAA regarding the "Petition to Designate Critical Habitat for the Kemp's Ridley Sea Turtle (*Lepidochelys kempii*)" submitted to NOAA I request a copy of all records (documents, emails, records of meetings and/or phone conversations, etc.) over the period of 2015-2017 Please see attached file for description of records request.

All records mentioning, including and/or referencing timing for release of 4th National Climate Assessment, whether in the public domain or otherwise Please see attached.

NARA is aware of an alleged unauthorized disposition of NOAA records based on a new article published in the Department of Justice Please produce all records in the Department's possession, custody, or control that support, explain, or otherwise relate to the Reportable Marine Incident that occurred on 13MAR2015 involving the USCGC My request is for any and all documents, including internal emails, that discuss NOAA's decision to remove the marine mammal ATTN - NAUTICAL DATA BRANCH: Requesting the following: (1) Latest Edition of All Volumes of the NAUTICAL DATA BRANCH 1994 report by NOAA. Exact title unknown but referenced document indicates the following keywords: Terry Creek A copy of the Meeting Minutes for the Gulf Coast Interagency Environmental Restoration Working Group, during the period of 2015-2017 This is a Freedom of Information Act Request on behalf of Alliance of Communities for Sustainable Fisheries (ACS) We are requesting copies of all emails, sent or received, of NOAA employees Ellen Brody and Russ Green that contain information that was interested in gaining access to the Ops1 webpage links. Specifically, I am interested in files discussing Airfield operations I request that a search be conducted of the NWS offices and employee files and that a copy of records concerning the article published on The Verge this week citing a NOAA study on the cyber security of DJI UAVs. Here is the link to the article: <https://www.theverge.com/2017/6/20/15844442/noaa-dji-uav-cyber-security> We placed a request for a formal debrief on a proposal declination on Jun 20 - DOC-NOAA-2017-001403. The due date for this request is 8/10/17 This is a FOIA request for two post hearing briefs written by Loren Remsberg, NOAA Office of the General Counsel I would like copies of all emails including the word CLIMATE or the word CHARTER or the phrase "ADVISORY COMMITTEE" A copy of each email that includes the word CLIMATE or the word CHARTER or the phrase "ADVISORY COMMITTEE" I request access to and copies of all email correspondence to and from Acting NOAA Administrator (and Under Secretary for Science) A copy of each email that includes the word CLIMATE or the word CHARTER or the phrase "ADVISORY COMMITTEE" CLARIFIED 8/10/17: I'm wanting the calendar for the head of NOAA. At the moment, the acting Administrator of NOAA is Thomas E. Taylor, III A true, complete and certified copy of your entire personnel/employment file of Thomas E. Taylor, III including but not limited to:

agency communications to, or from, Dr. John Bates regarding the 2015 Karl et al study in Science magazine Office Of Science & Technology Policy From February 2017 Through August 2017. I am requesting refers to and/or describes the dispersal of materials in the atmosphere visible over Monterey County, California for all years that are available in electronic form. I would like to receive this data in electronic form from NOAA and intra agency (between NOAA and any other external source/entity) : - all licenses and permits Atmospheric Administration ("NOAA"), that are, include, or reflect decisions, directions, or communications for the Hawaiian Islands (Kauai, Lanai, and Hawaii Island (Big Island) from 1997 to date. Please amend my request to apply to what is available from 2006-present). All data fields also contained in the parallel SEAMAP-SA-GOM and NEFSC surveys. All data to use data from the Marine Mammal Inventory Report for this project, as I believe it would be a very strong precedent globally. Thank you for your assistance.

Delaware River; Any and all requests for informal consultation for projects or initiatives that would impact a humpback whale they hunted and killed. The letter was likely sent in 2016. <http://ocean.fishery.noaa.gov/hi/Data/Pelagic/hpel7.htm>. This includes bigeye tuna catch, by pound, for longline, MHI troll, MHI longline, and MHI gillnet fisheries since November 1, 2016, related to the Hatchery. This request includes: 1. Documents, included to the U.S. Fish and Wildlife Service and to the National Oceanic and Atmospheric Administration by the end of the past year (since August 1, 2016), that discuss the following two issues: 1. Any proposed change, relaxation,

or it will be issued in final form by the statutory deadline, obstacles for completing by the deadline, and will

daily Caller News Foundation on July 6, 2017. Cause of Action Institute (CoA) believes that "NOAA might be required to relate to the Secretary of Commerce's (Secretary's) decision dated July 10, 2017, and final notice published on July 11, 2017. V LITTLE BULLY. A copy of the Captain of the Port Order 15-002 is attached. The undersigned attorney represents the following client: <http://www.vlittlegiant.com>

CHART MANUAL (2) Any and all documents or files associated with the charting of oil and gas structures in the Atlantic Ocean, Dupree Creek, Brunswick, GA sediment, Ampelisca abdita, amphipod, toxicity. Full quote regarding NOAA's charting of oil and gas structures for the calendar years 2015, 2016 and 2017. NOAA serves as the Chair of this Interagency Working Group.

IF), for copies of all internal and external communications concerning and regarding proposed wave or wind energy projects in the Lake Michigan National Marine Sanctuary, Lake Michigan National Marine Sanctuary. Weather Sensing equipment. My employer, Physical Optics Corporation, has been working with the US Coast Guard on the following subject be provided to me: ~ •Any and all communications. - documents, spreadsheets, surveys, and data that article: <https://www.theverge.com/2017/8/7/16106810/dji-drone-banned-government-study-data-sa> The date listed on the request is July 25. We still have not received a formal debrief or any indication that the request is being processed. Enforcement Division in "THE MATTER OF U.S. DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMITTEE". I limit this search to an electronic search of emails in the email accounts of the Acting Secretary of Commerce for Oceans and Atmosphere) Ben Friedman, his senior advisor, special assistant, and any other staff member of the NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMITTEE. I limit this search to an electronic search of emails in the email accounts of the Acting Secretary of Commerce for Oceans and Atmosphere) Ben Friedman, his senior advisor, special assistant, and any other staff member of the NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMITTEE. I limit this search to an electronic search of emails in the email accounts of the Acting Secretary of Commerce for Oceans and Atmosphere) Benjamin Friedman: <http://www.noaa.gov/leadership/benjamin-friedman> I'm not sure if he has been limited to application for employment, performance evaluations, wage earnings, disability records, att

[REDACTED]

ie (see <http://science.sciencemag.org/content/348/6242/1469>) from February 4, 2017 to present date. I want copies of incoming-and-outgoing correspondence, which should include emails, between the National Oceanic and Atmospheric Administration and the State of California on August 3, 2017, including but not limited to, the composition(s) of the materials dispersed and the location of the materials. I would like that in a format that is compatible with Excel or Access. Also, I would like to receive an electronic version of what is currently being issued by the State of Hawaii to NOAA Fisheries in 2016 and 2017. - all licenses and permits issued by NOAA Fisheries—internal or external to Commerce—concerning President Trump's Executive Order titled "Implementing a National Ocean Policy." ONLY.

including environmental, and station data, including comparison and other associated trawls/cruises. Data field names and values. I would like the source of evidence for my argument. Of course everything would be cited and fully referenced.

about the Atlantic sturgeon in the Delaware River; NMFS/NOAA responses to requests for informal consultations regarding the Atlantic sturgeon in the Delaware River; NMFS/NOAA responses to requests for informal consultations regarding the Atlantic sturgeon in the Delaware River.

handline, and offshore handline fishers.

including any communications, from and/or to FWS related to the Hatchery; 2. Documents related to any consultation or petition filed with the National Marine Fisheries Service (NMFS) by Wild Earth Guardians (Feb. 17, 2010, available at: <http://www.nmfs.noaa.gov/pr/pdfs/petitions/kempspri.htm>), or elimination of existing marine species or habitat protections in federal waters off Alaska. Alaska

whether the recent decision to terminate the 'Advisory Committee for Sustained National Climate Assessment' is appropriate.

be illegally destroying records of a recent Management Council meeting discussing regulations against the Atlantic sturgeon in the Delaware River, held on July 20, 2017, determining that the state of New Jersey was in compliance with regard to management of the Atlantic sturgeon in the Delaware River. has been retained by SeaTow Islamorada. SeaTow Islamorada was contracted to provide services to the Atlantic sturgeon in the Delaware River.

s in Quarantine Bay, Louisiana, as depicted on NOAA/NOS/OCS Chart # 11364 and/or US Coast and Geodetic Survey Chart # 11364. I would like a NOAA/NOS/OCS Chart # 11364 and/or US Coast and Geodetic Survey Chart # 11364 report to give context: In 1994, NOAA obtained sediment samples from estuarine settings in the Terrebonne Bay, Louisiana.

wind energy projects offshore California between January 1, 2010, to date. This request includes, but is not limited to, all records, reports, correspondence, and other documents related to the creation of a National Marine Sanctuaries System in the San Francisco Bay Area, including but not limited to, the creation of a National Marine Sanctuary in the San Francisco Bay Area; Air Force, Navy, and Marine Corps weather departments to develop both remote and fixed weather sensor networks; and other records concerning or related to Space Data and Information Systems proposal to the National Oceanic and Atmospheric Administration. I would like: 1) A copy of a report and all supporting documents. 2) Any email relating to the Verge case. This request has been reviewed. Our earlier request is below: Michigan Tech kindly requests a formal deposition from the National Oceanic and Atmospheric Administration Agency, v. CHARLES MINCEY, JR, Respondent, Acting Administrator Ben Friedman, and those of his Senior Advisor, Special Assistant, Chief of Staff, Deputy Administrator Ben Friedman, and those of his Senior Advisor, Special Assistant, Chief of Staff, Deputy Chief of Staff, deputy chief of staff and policy director, between the dates of July 1, 2017, and the date that Ben Friedman was no longer in that role since January 1, though. If he has, then I would like his calendar for that time period. If so, I would like attendance records, vacation and/or sick time taken, workers' compensation claims; copies of any and all records, reports, correspondence, and other documents related to the creation of a National Marine Sanctuaries System in the San Francisco Bay Area, including but not limited to, the creation of a National Marine Sanctuary in the San Francisco Bay Area; Air Force, Navy, and Marine Corps weather departments to develop both remote and fixed weather sensor networks; and other records concerning or related to Space Data and Information Systems proposal to the National Oceanic and Atmospheric Administration.

[REDACTED]

would like to receive the information in electronic form, preferably a searchable PDF or in XML format. I
enters for Environmental Information within the National Oceanic and Atmospheric Administration and I
d the quantities of each material dispersed. On information and observation, I have probable cause to su
nly called the data dictionary, which would explain the contents of each field of information.

the State of Hawaii Department of Transportation to NOAA Fisheries in 2017. - All communications bet
ting an America-First Offshore Energy Strategy" (April 28, 2017) ("Executive Order") (Exh. A) as it pertai

ds for each trawl include, but not limited to: 1) Biological: a. Species ID (all taxa) b. All counts/biomass/le

tion for projects or initiatives that would impact the Atlantic sturgeon in the Delaware River; Any and all r

sultation under section 7(a)(2) of the Endangered Species Act on any effects of the Hatchery, including
dley_criticalhabitat_feb 2010.pdf), all records used, consulted, considered, reviewed, or referred to by N
federal marine protections subject to this request include, but are not limited to, the following: Aleutian Is

ment' will impact the date for issuance of the final 4th National Climate Assessment.

the fishing industry." The discussed new rules, " compel fisherman to pay for supplemental a
ement of its recreational summer flounder fishery under the Atlantic Coastal Fisheries Cooperative Man
.ITTL BULLY and its barge while grounded.

ieodetic Survey Chart #1271 and/or NOAA Electronic Navigation Chart (ENC) US4LA35M for the years
rry Creek and Back River areas and analyzed these samples for acute toxicity to the marine amphipod /

not exclusive of, any policy-development discussions for these types of energy projects, and/or discussi
nctuary in Lake Michigan. The period for the requested emails is January 1, 2017 through July 31, 2017
sors. As a prior Air Force weather forecaster, I understand the benefit of staying up to date with current p
e N WS regarding Space Data's Stratospheric Nano Satellites ("SNS") system and/or the N
article 3) Any email communication between the authors of the report and any representatives of DJI 4) /
rief on the CILER21 proposal that was not selected for funding. NOAA-OAR-CIPO-2017-2005127 - can
Docket No. SE1305037. The two briefs were designated by hearing Judge Christine Coughlin as Ag.Ini.
eputy Chief of Staff and Policy Director. I limit this search to the dates July 1, 2017 to the present.

Chief of Staff and Policy Director. I limit this search to the dates July 1, 2017 to the present.

is request is fulfilled with the following search terms: n "climate assessment" n "advisory committee" A cc
Chief of Staff and Policy Director. I limit this search to the dates July 1, 2017 to the present.

someone else has been the Administrator or the acting Administrator of NOAA during that time, I would lik
doctor's reports, doctors notes concerning medical/physical limitations; and reports of physical examina

[REDACTED]
My understanding is he retired recently but it has not occurred to me that he might have sent more email: he Office Of Science & Technology Policy, within the Executive Office of the President, from Febru: I suspect that the materials dispersed include at least Welsbach and Welsbach-like materials (such as the

ween NOAA Fisheries and the State of Hawaii regarding usage/posting/setting of NOAA signs, fences, e ns to "Incidental Take Authorization requests, including Incidental Harassment Authorizations and Letter ngths (including subsamples) 2) Temporal: a. Date b. Time 3) Station: a. Beginning/end latitude/longitud

requests for formal consultation for projects or initiatives that would impact the Atlantic sturgeon in the D

any final or draft biological assessment, final or draft biological evaluation, final or draft biological opinior OAA to consider, evaluate, formulate a response and respond to the petition including, without lim lands Coral Habitat Protection Areas; Aleutian Islands Habitat Conservation Area; Bowers Ridge Habita

t-sea monitoring services, which would have a disastrous effect on America 's fishing industry.- NARA is agement Act (ACFCMA), 16 U.S.C. Secs 5101-5108 (2012). For the period on or after February 2, 2017

1960-2016 (3)For the years 1960-2016, any and all copies of documents provided by the US Army Corp Ampelisca abdita (NOAA, 1994). Results indicated that sediments from Terry Creek exhibited sediment

ons of the fiscal implications to the national marine sanctuary program, or to individual sanctuary sites, a

ublications, as well as in touch with the NWS/NOAA departments. Would I be able to gain access to pa JWS's radiosonde upper air observation system. • Any and all communications, documents, spreadshee Any email communication between NOAA, the Dept of Commerce and DJI concerning the article 5) Any dice.jongsma@noaa.gov

Br. and Ag.Rep.Br. The Mincey hearing was held July 15-16, 2014, at Georgetown, S.C.

copy of each email that includes the phrase "CLIMATE ASSESSMENT" or the phrase "ADVISORY COMM

re their calendar too. In other words, the schedule of whoever was in charge of NOAA each day from Ja tions.

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s in after his retirement.
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oxides of metals), coal as

etc. from January 2017 unti
s of Authorization” for seismic surveys. See Exh. A § 9. This includes but is not limited to records that ar
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s of Engineers to NOAA/NOS/OCS (and specifically the NOS Marine Charting Divisi
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rticular Ops1 Publi
ts, submissions, agreements, or other records conc
between NASA and the Verge reporter. 6) Any documents relating to

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nuary 1 to the present. ----



e or reflect: NOAA's evaluation of applications for incidental harassment authorizations (IHAs) for seis



ismic airgun surveys in the Mid- and South Atlantic Planning Areas; and communications with applicants



seeking IHAs for seismic surveys, and/or with any other industry group regarding the Executive Order a:



s it applies to authorizations for the taking of marine mammals inc



Tracking Number	Type	Requester
DOC-NOAA-2017-000298	Request	Charles Mouton
DOC-NOAA-2015-001485	Request	Richard Knudsen
DOC-NOAA-2015-001484	Request	Richard Knudsen
DOC-NOAA-2015-001487	Request	Richard Knudsen
DOC-NOAA-2017-001582	Request	Lisa Conley
DOC-NOAA-2017-001382	Request	Margaret Townsend
DOC-NOAA-2016-000351	Request	Bill Marshall
DOC-NOAA-2017-001670	Request	Kathleen Casey
DOC-NOAA-2017-001646	Request	Douglas Mackenzie
DOC-NOAA-2017-001321	Request	Elizabeth N. Moran
DOC-NOAA-2017-000579	Request	Emily Yehle
DOC-NOAA-2017-000580	Request	Bill Marshall
DOC-NOAA-2017-000613	Request	Dan Vergano
DOC-NOAA-2016-000423	Request	Ryan P. Mulvey
DOC-NOAA-2017-000342	Request	Ryan P. Mulvey
DOC-NOAA-2017-000304	Request	Bryn Blomberg
DOC-NOAA-2017-000226	Request	Emma Hiolski
DOC-NOAA-2017-000195	Request	Thomas Knudson
DOC-NOAA-2017-000170	Request	Kara McKenna
DOC-NOAA-2015-000190	Request	Miyo Sakashita
DOC-NOAA-2016-000094	Request	Josh Schopf
DOC-NOAA-2016-001763	Request	Thomas Knudson
DOC-NOAA-2016-001751	Request	Thomas Knudson
DOC-NOAA-2017-001765	Request	Jill Riepenhoff
DOC-NOAA-2017-001743	Request	Zeenat Mian
DOC-NOAA-2017-001741	Request	Vivian Wang
DOC-NOAA-2017-001729	Request	Robert Boesch
DOC-NOAA-2014-001474	Request	Eric Huber
DOC-NOAA-2017-001681	Request	Santiago Beach
DOC-NOAA-2017-001647	Request	Ingrid N. Visser
DOC-NOAA-2017-001645	Request	Teresa Marshall
DOC-NOAA-2017-001643	Request	Sarah B. Brady
DOC-NOAA-2017-001642	Request	Lisa Demer
DOC-NOAA-2017-001641	Request	Brian A. Knutsen
DOC-NOAA-2017-001630	Request	Andrew Ogden
DOC-NOAA-2017-001710	Request	Rick Steiner
DOC-NOAA-2017-001616	Request	Russ Kick
DOC-NOAA-2017-001620	Request	Andrew Hartzell
DOC-NOAA-2017-001606	Request	Molly Masterton
DOC-NOAA-2017-001730	Request	Joseph M. Sullivan
DOC-NOAA-2017-001546	Request	Andrew G. Ogden
DOC-NOAA-2017-001534	Request	Zeenat Mian
DOC-NOAA-2017-001530	Request	Katherine Poole
DOC-NOAA-2017-001528	Request	James L. Buchal
DOC-NOAA-2017-001505	Request	Baylee Bunyard
DOC-NOAA-2016-001390	Request	Jennie Frost
DOC-NOAA-2017-001448	Request	Elizabeth A. Mitchell
DOC-NOAA-2017-001431	Request	Margaret Townsend
DOC-NOAA-2016-001402	Request	Stephen S. Schwartz
DOC-NOAA-2017-001426	Referral	William W. Sapp
DOC-NOAA-2017-001420	Request	Russ Kick

DOC-NOAA-2017-001411 Request Margaret Townsend
DOC-NOAA-2017-001394 Request Ivy N. Fredrickson
DOC-NOAA-2017-001391 Request Elizabeth A. Mitchell
DOC-NOAA-2017-001390 Request Elizabeth A. Mitchell
DOC-NOAA-2016-001299 Request Thomas Knudson
DOC-NOAA-2017-001380 Request Tom McDonald
DOC-NOAA-2017-001383 Request Margaret Townsend
DOC-NOAA-2017-001376 Request Gabe Flick
DOC-NOAA-2017-001346 Request Catha Lewey
DOC-NOAA-2017-001316 Request Chris Saeger
DOC-NOAA-2017-001285 Request Jared S. Goodman
DOC-NOAA-2017-001275 Request Kara McKenna
DOC-NOAA-2017-001345 Request David A. Moskowitz
DOC-NOAA-2017-001220 Request Nathan Eagle
DOC-NOAA-2017-001219 Request Nathan Eagle
DOC-NOAA-2017-001217 Request Nathan Eagle
DOC-NOAA-2017-001200 Request Meera Gajjar
DOC-NOAA-2017-001198 Request Brett Sommermeyer
DOC-NOAA-2017-001196 Request Kristen L. Boyles
DOC-NOAA-2017-001190 Request ERIC R. BOLINDER
DOC-NOAA-2017-001194 Request ERIC R. BOLINDER
DOC-NOAA-2017-001094 Request Brettny E. Hardy
DOC-NOAA-2017-001093 Request Brettny E. Hardy
DOC-NOAA-2017-001092 Request Brettny E. Hardy
DOC-NOAA-2017-001073 Request Christopher Hudak
DOC-NOAA-2017-001072 Request Christopher Hudak
DOC-NOAA-2017-001071 Request Christopher Hudak
DOC-NOAA-2017-001070 Request Christopher Hudak
DOC-NOAA-2017-001038 Request Sean Sherman
DOC-NOAA-2016-000959 Request Office Administrator
DOC-NOAA-2017-000994 Request Mariel Combs
DOC-NOAA-2017-000986 Request Tristan R. Armer
DOC-NOAA-2017-000865 Request Zeenat Mian
DOC-NOAA-2016-000807 Request Basil Scott
DOC-NOAA-2017-000744 Request Zeenat Mian
DOC-NOAA-2016-001743 Request John Greenewald
DOC-NOAA-2017-001677 Request Robert C. Stober, Esq.
DOC-NOAA-2017-000268 Request Brian D. Israel
DOC-NOAA-2016-000192 Request John Ferro
DOC-NOAA-2017-001782 Request Christine M. Walker
DOC-NOAA-2017-001763 Request Christopher M. Hannan
DOC-NOAA-2017-001758 Request Cristin Krachon
DOC-NOAA-2017-001745 Request Michael Ravnitzky
DOC-NOAA-2016-001599 Request Machele R. Hall
DOC-NOAA-2017-001676 Request Vincent C. Catania
DOC-NOAA-2017-001678 Request James Zeiler
DOC-NOAA-2017-001569 Request Sarah N. Emerson
DOC-NOAA-2017-001522 Request Yule Kim
DOC-NOAA-2017-001009 Request Edward Duhe
DOC-NOAA-2017-000414 Request Arnold & Porter Kaye Scholer LLP
DOC-NOAA-2017-000384 Request Marshall R. Morales
DOC-NOAA-2017-001731 Request Leah Pransky

DOC-NOAA-2017-001326 Request Hans Bader
DOC-NOAA-2017-001059 Request Richard Hirn
DOC-NOAA-2017-000790 Request Brian Gaffney
DOC-NOAA-2017-000768 Request Julio C. Gomez
DOC-NOAA-2017-000058 Request Christopher T. Clack
DOC-NOAA-2017-000034 Request Christopher T. Clack
DOC-NOAA-2014-001694 Request Lawrence A. Kogan
DOC-NOAA-2017-001691 Request David Kovar
DOC-NOAA-2017-001680 Request Robert Shuchman
DOC-NOAA-2017-001487 Request John Greenewald
DOC-NOAA-2017-001403 Request Robert Shuchman
DOC-NOAA-2014-000714 Request Lawrence Kogan
DOC-NOAA-2017-001523 Request Brian L. Kahn
DOC-NOAA-2017-001565 Request Charles Seife
DOC-NOAA-2017-000843 Request Benjamin Levitan
DOC-NOAA-2017-001692 Request William S. Walker
DOC-NOAA-2017-001163 Request Jacqueline Iwata
DOC-NOAA-2017-001101 Request Ryan P. Mulvey
DOC-NOAA-2017-001756 Request Jeff Tollefson
DOC-NOAA-2017-001739 Request Lauren N. Evans
DOC-NOAA-2017-001734 Request Andrew C. Revkin
DOC-NOAA-2017-001722 Request Michael Ravnitzky
DOC-NOAA-2017-001635 Request Russ Kick
DOC-NOAA-2017-001483 Request Stanley Tromp
DOC-NOAA-2017-000845 Request Elizabeth N. Moran
DOC-NOAA-2017-000846 Request Elizabeth N. Moran
DOC-NOAA-2017-001760 Request John Harding
DOC-NOAA-2017-001585 Request Anthony V. Schick

Requester Organization	Submitted	Received	Assigned To
Mahtook & Lafleur	11/30/2016	11/30/2016	AGO
	06/29/2015	06/29/2015	AGO
	06/29/2015	06/29/2015	AGO
	06/29/2015	06/29/2015	AGO
	07/24/2017	07/24/2017	CAO
	06/13/2017	06/13/2017	LA
Judicial Watch	10/30/2015	10/30/2015	NESDIS
American Bridge 21st Century	08/08/2017	08/08/2017	NESDIS
	08/03/2017	08/03/2017	NESDIS
GARY GILBERT & ASSOCIATES, P.C.	06/02/2017	06/02/2017	NESDIS
Environment & Energy Publishing	02/08/2017	02/08/2017	NESDIS
Judicial Watch	02/08/2017	02/08/2017	NESDIS
BuzzFeed News	02/07/2017	02/07/2017	NESDIS
Cause of Action	12/21/2015	12/21/2015	NMFS
Cause of Action	12/13/2016	12/13/2016	NMFS
Western Resources Legal Center	11/30/2016	11/30/2016	NMFS
	11/29/2016	11/29/2016	NMFS
Center for Investigative Reporting	11/17/2016	11/18/2016	NMFS
Cause of Action	11/09/2016	11/09/2016	NMFS
Center for Biological Diversity	11/02/2014	11/03/2014	NMFS
Cause of Action	10/14/2015	10/14/2015	NMFS
Center for Investigative Reporting	09/14/2016	09/15/2016	NMFS
Center for Investigative Reporting	09/14/2016	09/14/2016	NMFS
Raycom Media	08/25/2017	08/25/2017	NMFS
	08/22/2017	08/22/2017	NMFS
Natural Resources Defense Council	08/22/2017	08/22/2017	NMFS
University of Hawaii at Manoa	08/21/2017	08/21/2017	NMFS
Sierra Club	08/12/2014	08/12/2014	NMFS
	08/10/2017	08/10/2017	NMFS
Orca Research Trust	08/04/2017	08/04/2017	NMFS
PETA Foundation	08/03/2017	08/03/2017	NMFS
Delaware Riverkeeper Network	08/03/2017	08/03/2017	NMFS
Alaska Dispatch News	08/02/2017	08/02/2017	NMFS
Wild Fish Conservancy c/o Kampmeier & Knutsen PLLC	08/01/2017	08/01/2017	NMFS
Turtle Island Restoration Network	08/01/2017	08/01/2017	NMFS
Oasis Earth	08/01/2017	08/01/2017	NMFS
	07/30/2017	07/31/2017	NMFS
O'Neil LLP	07/28/2017	07/28/2017	NMFS
Natural Resources Defense Council	07/26/2017	07/26/2017	NMFS
Inter-Cooperative Exchange (ICE)	07/19/2017	07/19/2017	NMFS
Turtle Island Restoration Network	07/18/2017	07/18/2017	NMFS
	07/17/2017	07/17/2017	NMFS
Natural Resources Defense Council	07/13/2017	07/13/2017	NMFS
Murphy & Buchal LLP	07/13/2017	07/13/2017	NMFS
	07/07/2017	07/10/2017	NMFS
Trustees for Alaska	07/05/2016	07/06/2016	NMFS
Association for Professional Observers	06/29/2017	06/29/2017	NMFS
	06/27/2017	06/27/2017	NMFS
Cause of Action Institute	06/27/2016	06/27/2016	NMFS
Southern Environmental Law Center	06/26/2017	06/26/2017	NMFS
	06/25/2017	06/26/2017	NMFS

	06/22/2017	06/23/2017	NMFS
Ocean Conservancy	06/19/2017	06/19/2017	NMFS
Association for Professional Observers	06/16/2017	06/16/2017	NMFS
Association for Professional Observers	06/16/2017	06/16/2017	NMFS
Center for Investigative Reporting	06/15/2016	06/15/2016	NMFS
Cascadia Law Group PLLC	06/14/2017	06/15/2017	NMFS
	06/13/2017	06/13/2017	NMFS
	06/12/2017	06/12/2017	NMFS
Penobscot Nation	06/08/2017	06/08/2017	NMFS
Western Values Project	06/07/2017	06/07/2017	NMFS
PETA Foundation	05/30/2017	05/31/2017	NMFS
Cause of Action	05/24/2017	05/24/2017	NMFS
The Conservation Angler	05/24/2017	05/24/2017	NMFS
Honolulu Civil Beat	05/16/2017	05/17/2017	NMFS
Honolulu Civil Beat	05/16/2017	05/17/2017	NMFS
Honolulu Civil Beat	05/16/2017	05/17/2017	NMFS
National Whistleblower Center	05/11/2017	05/11/2017	NMFS
	05/11/2017	05/11/2017	NMFS
Earthjustice	05/10/2017	05/11/2017	NMFS
Cause of Action Institute	05/09/2017	05/09/2017	NMFS
Cause of Action Institute	05/02/2017	05/02/2017	NMFS
Earthjustice	04/26/2017	04/26/2017	NMFS
Earthjustice	04/26/2017	04/26/2017	NMFS
Earthjustice	04/26/2017	04/26/2017	NMFS
Environmental Advocates	04/21/2017	04/21/2017	NMFS
Environmental Advocates	04/21/2017	04/21/2017	NMFS
Environmental Advocates	04/21/2017	04/21/2017	NMFS
Environmental Advocates	04/21/2017	04/21/2017	NMFS
Public Citizen, Inc	04/17/2017	04/17/2017	NMFS
Friends of Animals	04/12/2016	04/13/2016	NMFS
Oceana	04/10/2017	04/11/2017	NMFS
HSCBPA	04/10/2017	04/10/2017	NMFS
	03/23/2017	03/23/2017	NMFS
Kauai Community Cat Project	03/16/2016	03/16/2016	NMFS
	03/08/2017	03/08/2017	NMFS
The Black Vault	09/12/2016	09/12/2016	NOAA FOIA
Hershoff, Lupino & Yagel, LLP	08/07/2017	08/07/2017	NOAA FOIA
ARNOLD & PORTER LLP	11/28/2016	11/28/2016	NOS
Poughkeepsie Journal	11/03/2015	11/03/2015	NOS
Fowler White Burnett	08/29/2017	08/29/2017	NOS
Baker Donelson	08/24/2017	08/24/2017	NOS
Geosyntec Consultants	08/24/2017	08/24/2017	NOS
	08/22/2017	08/22/2017	NOS
Tulane Environmental Law Clinic	08/12/2016	08/12/2016	NOS
	08/09/2017	08/09/2017	NOS
Citizens for Responsible Zoning and Landowner Rights	08/07/2017	08/07/2017	NOS
VICE	07/19/2017	07/19/2017	NOS
	07/14/2017	07/14/2017	NOS
LISKOW & LEWIS	03/31/2017	03/31/2017	NOS
Arnold & Porter Kaye Scholer LLP	01/09/2017	01/09/2017	NOS
Beveridge and Diamond	01/03/2017	01/04/2017	NOS
Keker, Van Nest & Peters LLP	08/21/2017	08/21/2017	NWS

Competitive Enterprise Institute	06/07/2017	06/07/2017	NWS
National Weather Service Employees	04/18/2017	04/18/2017	NWS
Law Office of Brian Gaffney	03/14/2017	03/14/2017	NWS
GOMEZ LLC Attorney At Law	03/10/2017	03/10/2017	NWS
	10/13/2016	10/13/2016	OAR
	10/11/2016	10/11/2016	OAR
Institute for Trade, Standards and Sustainable Development	09/22/2014	09/22/2014	OAR
	08/10/2017	08/10/2017	OAR
MTRI, MTU	08/09/2017	08/09/2017	OAR
The Black Vault	07/06/2017	07/07/2017	OAR
MTRI, Michigan Technological University	06/20/2017	06/20/2017	OAR
ITSSD	03/26/2014	03/26/2014	OAR
Climate Central	07/14/2017	07/14/2017	OC
	06/19/2017	06/19/2017	OC
Environmental Defense Fund	03/20/2017	03/20/2017	OC
	08/10/2017	08/10/2017	OGC
Natural Resources Defense Council	05/05/2017	05/05/2017	OGC
Cause of Action	04/27/2017	04/27/2017	OGC
Nature	08/24/2017	08/24/2017	USEC
	08/22/2017	08/22/2017	USEC
ProPublica	08/21/2017	08/21/2017	USEC
	08/21/2017	08/21/2017	USEC
	08/02/2017	08/02/2017	USEC
	07/06/2017	07/06/2017	USEC
The Law Offices of Gary M. Gilbert & Associates, P.C.	03/16/2017	03/16/2017	USEC
The Law Offices of Gary M. Gilbert & Associates, P.C.	03/16/2017	03/16/2017	USEC
Martin Kane & Kuper	08/16/2017	08/16/2017	WFMO
Oregon Public Broadcasting	07/24/2017	07/24/2017	WFMO

Perfected?	Due	Closed Date	Status	Dispositions
Yes	01/13/2017	TBD	Assignment Determination	
Yes	10/08/2015	TBD	Assignment Determination	
Yes	10/08/2015	TBD	Assignment Determination	
Yes	07/31/2015	TBD	Assignment Determination	
Yes	08/21/2017	TBD	Research Records	
Yes	07/13/2017	TBD	Assignment Determination	
Yes	01/14/2016	TBD	Evaluation of Records	
Yes	09/19/2017	TBD	Assignment Determination	
Yes	09/08/2017	TBD	Assignment Determination	
Yes	07/07/2017	TBD	Research Records	
Yes	03/24/2017	TBD	Evaluation of Records	
Yes	04/05/2017	TBD	Research Records	
Yes	03/29/2017	TBD	Evaluation of Records	
Yes	02/04/2016	TBD	Evaluation of Records	
Yes	02/03/2017	TBD	Evaluation of Records	
Yes	01/13/2017	TBD	Evaluation of Records	
Yes	09/08/2017	TBD	Research Records	
Yes	12/30/2016	TBD	Evaluation of Records	
Yes	01/05/2017	TBD	Research Records	
Yes	12/05/2014	TBD	Research Records	
Yes	02/18/2016	TBD	Evaluation of Records	
Yes	10/27/2016	TBD	Evaluation of Records	
Yes	10/28/2016	TBD	Evaluation of Records	
Yes	09/27/2017	TBD	Assignment Determination	
Yes	09/22/2017	TBD	Assignment Determination	
Yes	09/22/2017	TBD	Assignment Determination	
Yes	09/19/2017	TBD	Assignment Determination	
Yes	09/10/2014	TBD	Evaluation of Records	
Yes	09/19/2017	TBD	Research Records	
Yes	09/12/2017	TBD	Assignment Determination	
Yes	09/08/2017	TBD	Research Records	
Yes	09/08/2017	TBD	Research Records	
Yes	09/22/2017	TBD	Assignment Determination	
Yes	09/22/2017	TBD	Assignment Determination	
Yes	09/08/2017	TBD	Assignment Determination	
Yes	09/15/2017	TBD	Assignment Determination	
Yes	09/08/2017	TBD	Assignment Determination	
Yes	09/12/2017	TBD	Research Records	
Yes	09/21/2017	TBD	Assignment Determination	
Yes	10/03/2017	TBD	Assignment Determination	
Yes	08/30/2017	TBD	Assignment Determination	
Yes	08/30/2017	TBD	Evaluation of Records	
Yes	09/14/2017	TBD	Research Records	
Yes	08/28/2017	TBD	Research Records	
Yes	08/14/2017	TBD	Assignment Determination	
Yes	10/14/2016	TBD	Research Records	
Yes	07/31/2017	TBD	Assignment Determination	
Yes	07/28/2017	TBD	Assignment Determination	
Yes	08/19/2016	TBD	Assignment Determination	
Yes	07/25/2017	TBD	Research Records	
Yes	07/28/2017	TBD	Research Records	

Yes	08/10/2017	TBD	Evaluation of Records
Yes	08/11/2017	TBD	Research Records
Yes	08/01/2017	TBD	Assignment Determination
Yes	08/01/2017	TBD	Assignment Determination
Yes	07/20/2016	TBD	Final Preparation of Response
Yes	07/14/2017	TBD	Assignment Determination
Yes	09/15/2017	TBD	Assignment Determination
Yes	07/26/2017	TBD	Assignment Determination
Yes	07/11/2017	TBD	Assignment Determination
Yes	07/21/2017	TBD	Assignment Determination
Yes	07/13/2017	TBD	Assignment Determination
Yes	07/10/2017	TBD	Assignment Determination
Yes	08/02/2017	TBD	Final Preparation of Response Partial grant/partial denial
Yes	08/16/2017	TBD	Research Records
Yes	06/20/2017	TBD	Research Records
Yes	06/20/2017	TBD	Evaluation of Records
Yes	06/30/2017	TBD	Research Records
Yes	07/21/2017	TBD	Research Records
Yes	06/16/2017	TBD	Assignment Determination
Yes	06/22/2017	TBD	Assignment Determination
Yes	06/22/2017	TBD	Assignment Determination
Yes	07/03/2017	TBD	Assignment Determination
Yes	07/03/2017	TBD	Assignment Determination
Yes	07/03/2017	TBD	Assignment Determination
Yes	06/16/2017	TBD	Assignment Determination
Yes	06/16/2017	TBD	Assignment Determination
Yes	06/16/2017	TBD	Research Records
Yes	09/12/2017	TBD	Research Records
Yes	05/16/2017	TBD	Research Records
Yes	05/25/2016	TBD	Evaluation of Records
Yes	05/09/2017	TBD	Assignment Determination
Yes	05/09/2017	TBD	Evaluation of Records
Yes	05/08/2017	TBD	Research Records
Yes	05/04/2016	TBD	Evaluation of Records
Yes	04/06/2017	TBD	Research Records
Yes	10/13/2016	TBD	Evaluation of Records
Yes	09/19/2017	TBD	Assignment Determination
Yes	01/10/2017	TBD	Assignment Determination
Yes	12/04/2015	TBD	Research Records
Yes	09/27/2017	TBD	Assignment Determination
Yes	09/27/2017	TBD	Assignment Determination
Yes	09/27/2017	TBD	Assignment Determination
Yes	09/22/2017	TBD	Assignment Determination
Yes	09/29/2016	TBD	Assignment Determination
Yes	09/19/2017	TBD	Assignment Determination
Yes	09/18/2017	TBD	Assignment Determination
Yes	09/05/2017	TBD	Evaluation of Records
Yes	08/14/2017	TBD	Assignment Determination
Yes	05/23/2017	TBD	Research Records
Yes	03/07/2017	TBD	Research Records
Yes	02/24/2017	TBD	Final Preparation of Response
Yes	09/19/2017	TBD	Assignment Determination

Yes	07/07/2017	TBD	Research Records
Yes	05/19/2017	TBD	Assignment Determination
Yes	04/17/2017	TBD	Assignment Determination
Yes	04/12/2017	TBD	Research Records
Yes	11/25/2016	TBD	Research Records
Yes	11/09/2016	TBD	Research Records
Yes	10/22/2014	TBD	Assignment Determination
Yes	09/19/2017	TBD	Assignment Determination
Yes	09/19/2017	TBD	Assignment Determination
Yes	08/14/2017	TBD	Assignment Determination
Yes	07/25/2017	TBD	Assignment Determination
Yes	05/13/2014	TBD	Assignment Determination
Yes	08/16/2017	TBD	Assignment Determination
Yes	08/30/2017	TBD	Research Records
Yes	04/25/2017	TBD	Assignment Determination
Yes	09/19/2017	TBD	Assignment Determination
Yes	06/16/2017	TBD	Assignment Determination
Yes	06/16/2017	TBD	Assignment Determination
Yes	09/22/2017	TBD	Assignment Determination
Yes	09/20/2017	TBD	Assignment Determination
Yes	09/20/2017	TBD	Assignment Determination
Yes	09/19/2017	TBD	Assignment Determination
Yes	09/08/2017	TBD	Assignment Determination
Yes	08/14/2017	TBD	Assignment Determination
Yes	04/13/2017	TBD	Research Records
Yes	04/18/2017	TBD	Evaluation of Records
Yes	09/22/2017	TBD	Assignment Determination
Yes	08/21/2017	TBD	Assignment Determination

Detail

We are representing Harvest Pipeline Company in connection with an incident which occurred on 5 September 2017. Information relating to DOC's "Blanket Purchase Agreement with Sprint"

Information relating to DOC's "Blanket Purchase Agreement with AT&T Corporation"

I request an April 1, 2009 Blanket Purchase Agreement (BPA) order for Verizon Wireless wireless supplies-and services. I, Lisa Conley am the complainant for DOC OIG Referral 17-0469-N. I was informed by DOC OIG (Briane Jones - I am currently undertaking a project regarding the survival of marine mammals in Captivity. I would love to be able to apply for an Marine Mammal Inventory Report (MMIR) which includes all living and dead captive orca, list the most recent MMIR.

The Center requests the following records from the National Oceanic and Atmospheric Administration ("NOAA"):

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contract employees. Incoming-And-Outgoing Correspondence Between The National Centers for Environmental Information And The Centers for Environmental and Estuarine Science (Chesapeake Bay National Estuarine Research Reserve) Dear NOAA: I request copies of records under the Freedom of Information Act (5 U.S.C. 552) containing data that includes:

- Copies of any and all documents and communications related to the application, review, and consideration of The Center's request for a copy of the speech given by William Ka'ui Auahi Ohai Kamehamehe III, Governor of Hawaii, on the subject of the protection of the Hawaiian monk seal.

I request all communications from NOAA principal scientist John Bates concerning the study authored by Thomas Karl and Director of the Office of Science and Technology Assessment. Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of any and all records of communication between NOAA scientist Thomas Karl and Director of the Office of Science and Technology Assessment. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), CoA Institute hereby requests access to and copies of any and all records of communication between NOAA scientist Thomas Karl and Director of the Office of Science and Technology Assessment. This request generally concerns records related to the NMFS document entitled "Technical Guidance for Assessment of the Effects of Marine Mammal Strandings." I request access to and copies of any and all documents pertaining to California Governor Jerry Brown's request for a copy of the speech given by William Ka'ui Auahi Ohai Kamehamehe III, Governor of Hawaii, on the subject of the protection of the Hawaiian monk seal. CoA Institute hereby requests access to the following records for the time period of January 1, 2014, to the present:

- All documents and communications related to the National Marine Fisheries Service's (NMFS) listing determination for the Hawaiian monk seal.

1. All records relating to the destruction or shredding of documents authorized, approved, overseen or carried out by the NMFS.

Copies of all emails pertaining to observer health and safety written or received by National Marine Fisheries Service observers. A copy of the NMFS contract Arinex Pty Ltd. for the 8th International Fisheries Observer & Monitoring Conference. I am seeking the database of the Marine Mammal Inventory Report compiled by the National Marine Fisheries Service. Under the Freedom of Information Act I would like to request all the information listed below inter agency (within NOAA):

Please produce records of the following types in the possession, custody, or control of the National Oceanic and Atmospheric Administration:

1. Records of all cetacean stranding events in the main Hawaiian Islands - Kauai, including Niihau, Oahu, Maui, Moloaia, and Hawaii.

Endangered Species Act Section 7 Consultation Programmatic Biological Opinion of the US EPA's Issuance and Implementation.

I am currently undertaking a project regarding the survival of marine mammals in Captivity. I would love to be able to apply for an Marine Mammal Inventory Report (MMIR) which includes all living and dead captive orca, list the most recent MMIR.

Any and all requests for technical assistance for projects or initiatives that would impact the Atlantic sturgeon in the Gulf of Mexico. Please provide the letter of advisement sent by NOAA to the Alaska villages of Toksook Bay and Nightmute regarding the proposed development of the Toksook Bay and Nightmute villages. Please provide copies of all documents generated, created, modified, received, submitted, and/or issued by NOAA regarding the "Petition to Designate Critical Habitat for the Kemp's Ridley Sea Turtle (*Lepidochelys kempii*)" submitted to NOAA on 1/24/17. I request a copy of all records (documents, emails, records of meetings and/or phone conversations, etc.) over the period of 1/24/17 to the present. I hereby request all completed Reports of Whaling Operations (form 0648-0311) that have been turned in to NMFS for the period of 1/24/17 to the present. This firm respectfully requests a copy of all data, records, reports, correspondence, documents and other information related to the proposed development of the Toksook Bay and Nightmute villages. Please find attached a FOIA request from the Natural Resources Defense Council (NRDC) for records regarding the proposed development of the Toksook Bay and Nightmute villages.

- 1) All correspondence to or from Glenn Merrill, Assistant Regional Administrator for the Alaska Region of NMFS, for the period of 1/24/17 to the present.

REQUEST CONSOLIDATED & UPDATED 7/24: TIRN requests from the National Oceanic & Atmospheric Administration Under the Freedom of Information Act I would like to request all the information below inter agency (within NOAA):

1. All records related to the effect on endangered winter-run chinook salmon, threatened spring-run chinook salmon, and the effect on the Chinook Salmon population in the Klamath River Basin.

We are therefore requesting that the Center provide COMPASS modeling of increases in spill to gas cap levels at the Klamath River Basin. Please provide documentation that shows and/or tracks how much money is dedicated to gulf coast sea turtle conservation. This request is submitted on behalf of Suzanne Bostrom for Cook Inletkeeper. Please see attached document for more information. I request copies of NOAA communications (fax, e-mail, supporting documents) to other departments within NOAA regarding the proposed development of the Toksook Bay and Nightmute villages. The Center requests the following records from the U.S. Department of Commerce ("DOC") from April 1, 2017 to the present:

1. All documents, including intra-agency discussions and communications with outside parties, related to (1) NOAA's request for a copy of the speech given by William Ka'ui Auahi Ohai Kamehamehe III, Governor of Hawaii, on the subject of the protection of the Hawaiian monk seal.

REFERRAL FROM USACE: Southern Environmental Law Center (SELC) requests all documents in the possession, custody, or control of the U.S. Army Corps of Engineers (USACE) related to the proposed development of the Toksook Bay and Nightmute villages. I hereby request all Marine Mammal Stranding Report forms (NOAA Form 89-864) that have been turned in to NMFS for the period of 1/24/17 to the present.

The Center requests from the National Marine Fisheries Service ("NMFS") all records generated in connection with We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, file On 28 June 2017, via email, the requester clarified the search scope of the request to: "I would like both foreign of Through the Freedom of Information Act, I request the following documents: 1. E-mails, photographs and possibly Copies of all NOAA/NMFS training videos for fisheries observers for the years 2000 to 2016.

This request is directed to the National Marine Fisheries Service and pertains to the Pacific Northwest region (Was The Center requests from the National Marine Fisheries Service ("NMFS"): all records mentioning, including, and/c REVISED SCOPE 6/20: For the time period of May 8, 2015 through May 8, 2017 all text messages, facsimiles and Any and all documents consisting of or related to the National Oceanic and Atmospheric Administration ("NO

SCOPE REVISION 6/20 - To exclude the following information: out-of-office replies, duplicates of the same emails On behalf of People for the Ethical Treatment of Animals (PETA), and pursuant to the Freedom of Information Act, Pursuant to the FOIA, CoA Institute hereby requests access to the following records for the time period of October

All documents regarding the rate of conversion (i.e. passage loss, natural mortality, unaccounted for harvest, or oth I'd like to request information related to lobbying by the Western Pacific Regional Fishery Management Council (W

I'd like to request information related to the staff, consultants, and members of the Western Pacific Regional Fisher I'd like to request financial information concerning the Western Pacific Regional Fishery Management Council (WP

Please see attachment for full response Under the Freedom of Information Act, 5 U.S.C. § 552, I am requesti I am writing with a request for records maintained by the National Marine Fisheries Service ("NMFS") regarding the

See attached document. Please send copies of any and all documents, records, communications, correspondence Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), CoA Institute hereby requests access to

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), CoA Institute hereby requests access to We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, file

We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, file We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, file

Note: all requests set forth in paragraphs 1-4 below are requests for documents generated on or after January 1, 2 Note: all requests set forth in paragraphs 1-2 below are requests for documents generated on or after January 1, 2

1. Any reports, memoranda, correspondence, studies, or other documents pertaining to the extent to which the Nat 1. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning

Any and all records concerning implementation of Executive Order 13771, entitled "Reducing Regulation and Conti Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and end

REVISED SCOPE: PART 1: You request the following information for the HI SSSL Fishery from 2014 to 2017 (Prior 1. All joint enforcement agreements between NOAA/NMFS and the states of Tx., La., Ms., Al., Fl.; 2. All contracts c

REQUEST MODIFIED 4/13: - Commencement/start and end date of any contracts, cooperation agreements, grant Please see the attached document which requests records related to Monk Seals on and around the island of Kau

Under the Freedom of Information Act I would like to request all documents and communications inter office (withir I prefer electronic delivery of the requested material either via email or via CD-ROM or DVD via postal mail. I respe

Request all records associated with the Reportable Marine Incident that occurred on 13MAR2015 involving the UT' 1. All information (including work plans, quality assurance plans, validated and unvalidated data, results, correspon

Under FOIA, I hereby request any emails, reports or other documents prepared by, or for, NOAA relating to, or con My request is for any and all documents, including internal emails, that discuss NOAA's decision to remove the ma

ATTN - NAUTICAL DATA BRANCH: Requesting the following: (1)Latest Edition of All Volumes of the NAUTICAL C 1994 report by NOAA. Exact title unknown but referenced document indicates the following keywords: Terry Creek

A copy of the Meeting Minutes for the Gulf Coast Interagency Environmental Restoration Working Group, during C. On behalf of the Waterkeeper Alliance, Louisiana Environmental Action Network, and Apalachicola Riverkeeper I n

This is a Freedom of Information Act Request on behalf of Alliance of Communities for Sustainable Fisheries (ACS We are requesting copies of all emails, sent or received, of NOAA employees Ellen Brody and Russ Green that coi

Please provide all records generated in connection to complaints made to the Monterey Bay National Marine Sanct In NOAA's notice published 6/26/2017, entitled "Review of National Marine Sanctuaries and Marine National Monu

1. Any and all records, photographs, correspondence, documents, including email communication, pertaining to the REQUEST UPDATED 3/27 - The requester has approved that the \$18,212 refund for FOIA #2017-000320 be rolle

We request that a copy be provided, in digital format, of the following documents (or documents containing the folk I request that a search be conducted of the NWS offices and employee files and that a copy of records concerning

1. Any records memorializing, quoting, citing, or summarizing a conference call among National Weather Service n

1. A copy of any and all reports on the testing of the radiosonde autolauncher manufactured by the Vaisala Corpora

...all records from January 1, 2015 to the present discussing, documenting, memorializing, or otherwise concerning

Copies of all reports submitted to the Secretary of Commerce pursuant to 15 U.S.C. §330a, concerning "weat

UPDATED DESCRIPTION 10/26/16: All emails (and attachments) that have been received by or sent by the follow

Emails (and attachments) that have been received by or sent by the following NOAA employees (over the course o

This new FOIA Request seeks disclosure of as yet publicly disclosed documents substantiating the IQA conformar

The Verge published an article this week citing a NOAA study on the cyber security of DJI UAVs. Here is the link to

We placed a request for a formal debrief on a proposal declination on Jun 20 - DOC-NOAA-2017-001403. The due

I respectfully request a copy of records, electronic or otherwise, of the following document: Title: Proceedings of the

Michigan Tech kindly requests a formal debrief on the CILER21 proposal that was not selected for funding. NOAA-

Enactment by the USEPA of a series of national greenhouse gass (GHG) emission regulations based primarily upc

I request any records and email communications relating to drafting the press release on the 2017 edition of NOAA

I therefore request the following documents: Any e-mails, memos, presentations, or other documents that a) are de

Environmental Defense Fund ("EDF") respectfully requests records, as that term is defined at 5 U.S.C. § 552(f)(2)

This is a FOIA request for two post hearing briefs written by Loren Remsberg, NOAA Office of the General Counse

Please produce the following records in the National Oceanic & Atmospheric Administration's (NOAA) posses

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), CoA Institute hereby requests access to

I would like copies of all emails including the word CLIMATE or the word CHARTER or the phrase "ADVISOF

A copy of each email that includes the word CLIMATE or the word CHARTER or the phrase "ADVISORY CO

I request access to and copies of all email correspondence to and from Acting NOAA Administrator (and Under Sec

A copy of each email that includes the word CLIMATE or the word CHARTER or the phrase "ADVISORY CO

CLARIFIED 8/10/17: I'm wanting the calendar for the head of NOAA. At the moment, the acting Administrator of NC

Please send me your records on the U.S. withdrawing from the Paris Agreement, from June 1, 2017 to June 15, 20

Copies of the Reports of Investigation for any and all informal or formal EEO complaints filed by, or on behalf of, TI

Copies of any and all records, documents, and communications, including but not limited to emails, regarding any :

A true, complete and certified copy of your entire personnel/employment file of Thomas E. Taylor, III including but r

I request copies of any records detailing plans for reorganization or layoffs in the regions covering Oregon and Wa:

16 involving the Harvest BOA Pipeline System in Plaquemine Parish, Louisiana. Pursuant to the Freedom

services (approximately 9 pages) by Kathy Clark, U.S. Dept. of Commerce- Boulder Labs; Acquisition Manager (Investigator) that my matter was closed with OIG and referred to NOAA for any action they deemed appropriate. All records from January 20, 2017 to the date of this search that mention, include, or reference national programs regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures Office Of Science & Technology Policy From February 2017 Through August 2017. I am requesting records that refer to and/or describes the dispersal of materials in the atmosphere visible over Monterey County, California. (i) Thomas E. Smith, Jr. for the Physical Scientist, ZP-1301-4 (DE/CR) position, Vacancy Announcement No. 15-01-001; (ii) Karl that appears in the June 2015 issue of Science (now titled "Possible artifacts of data biases in environmental monitoring and Technology Policy John Holdren. The time frame for the requested records is January 20, 2009 through the date of the agency communications to, or from, Dr. John Bates regarding the 2015 Karl et al study in Science magazine; (iii) Deputy Assistant Administrator for Regulatory Programs; (iii) Brian Pawlak, Director of the Office of Marine Resources; (iv) all records of communications, including but not limited to e-mail, text or instant messages, or written correspondence; (v) all records of communications, including but not limited to e-mail, text or instant messages, or written correspondence regarding the Effects of Anthropogenic Sound on Marine Mammal Hearing: Underwater Acoustic Thresholds; (vi) February 09, 2016 letter to Secretary of Commerce Penny Pritzker) that a federal fishery disaster be declared; (vii) all records of communications, including but not limited to e-mail, text or instant messages, or written correspondence, NMFS Science and Research Director, NE Fisheries Science Center at the 8th International Fisheries Conference; (viii) 4. All records or communications (including emails, text messages, and voicemails) referring or relating to the proposal to list 66 coral species and to reclassify elkhorn and staghorn corals under the Endangered Species Act by NOAA employee Dale J. Jones, Jr., including but not limited to, records relating to all closed, dormant or inactive National Observer Program managers for the time period September 1, 2015 to September 14, 2016 and all records of communications, including but not limited to e-mail, text or instant messages, or written correspondence in San Diego, California from August 29 to September 2, 2016, including attachments. Copies of all records of communications, including but not limited to e-mail, text or instant messages, or written correspondence for all years that are available in electronic form. I would like to receive this data in electronic form through the Freedom of Information Act (FOIA) and intra agency (between NOAA and any other external source/entity) : - all licenses and permits issued by the National Atmospheric Administration ("NOAA"), that are, include, or reflect decisions, directions, or communications regarding the Hawaiian Islands, Lanai, and Hawaii Island (Big Island) from 1997 to date. Please amend my request to apply to what is necessary for the implementation of Final Regulations under Section 316(b) of the Clean Water Act. I am requesting records to use data from the Marine Mammal Inventory Report for this project, as I believe it would be a very strong project globally. Thank you for your assistance.

Delaware River; Any and all requests for informal consultation for projects or initiatives that would impact the population of a humpback whale they hunted and killed. The letter was likely sent in 2016.

Delaware River; Any and all requests for informal consultation for projects or initiatives that would impact the population of a humpback whale they hunted and killed. The letter was likely sent in 2016. Fisheries since November 1, 2016, related to the Hatchery. This request includes: 1. Documents, including but not limited to the U.S. Fish and Wildlife Service and to the National Oceanic and Atmospheric Administration by the Department of Commerce, that discuss the following two issues: 1. Any proposed change, relaxation, or modification of the Hatchery since January 1, 2016. I am requesting the entire form/report, including any attachments. Further, I ask you to search for records (received by, sent from, or in the possession of the National Marine Fisheries Service ("NMFS") and the Secretary of Commerce's decision determining that the state of New Jersey was in compliance with requirements of the Hatchery from January 1, 2016 through the present relating to (a) the interpretation and application of the arbitration process by the National Oceanic and Atmospheric Administration ("NOAA"), National Marine Fisheries Services ("NMFS") and any other divisions under NOAA; all records of communications, including but not limited to e-mail, text or instant messages, or written correspondence and intra office (between NOAA and any other external source/entity) of: + All sightings (reported by volunteers) and their habitat, of water diversions by any or all Sacramento River Settlement Contractors from 2000 to the present; (v) all records of communications, including but not limited to e-mail, text or instant messages, or written correspondence regarding the Snake River collector dams.

Delaware River

Delaware River; Any and all requests for informal consultation for projects or initiatives that would impact the population of a humpback whale they hunted and killed. The letter was likely sent in 2016. We request the following documents: 1. Any sampling information, studies, or other data regarding the population of a humpback whale they hunted and killed. The letter was likely sent in 2016. and/or other agencies such as the Department of Homeland Security, Department of State, and the US Fish and Wildlife Service. 2. All records of communications, including but not limited to e-mail, text or instant messages, or written correspondence from the date of this search: 1. All records mentioning, including, and/or referencing the draft and/or final biological opinion for the Snake River Settlement Contractors from 2000 to the present; (v) all records of communications, including but not limited to e-mail, text or instant messages, or written correspondence regarding the Snake River collector dams. June 23, 2016 announcement attached as Exhibit A, and (2) NOAA's underlying decision to partially reinstate the Snake River Settlement Contractors from 2000 to the present; (v) all records of communications, including but not limited to e-mail, text or instant messages, or written correspondence regarding the Snake River collector dams. In or control of the U.S. Army Corps of Engineers Headquarters (the Corps) that relate to the reauthorization of the Snake River Settlement Contractors from 2000 to the present; (v) all records of communications, including but not limited to e-mail, text or instant messages, or written correspondence regarding the Snake River collector dams. FS since July 1, 2016. Further, I ask that these documents be sent to me in any digital formats in which they are available.

the issuance of incidental harassment authorizations for oil and gas seismic exploration in the Atlantic (es, electronic mail records, or other documents, which were generated, received, kept, and/or considere servers (on US vessels) and US observers. For all observers I would like to know the regional observer faxes and other communications before and after and relating to my observer trip on board the America

hington state). Full text of the request is contained on the uploaded .pdf file entitled FOIA - NMFS-PacN or referencing NMFS's decision to deny the petition to list the Iliamna Lake Seal under the Endangered S emails (Including attachments) sent or received by: Will Ellis, NOAA OLE, Alaska Division Assistant Dir AA") and the relicensing of the Mattaceunk Hydroelectric Project on the Penobscot River, Maine (¿ and duplicate attachments disseminated to large volumes of recipients. I request access to and copie I request copies of all records regarding Permit No. 774, issued to SeaWorld on October 7, 1992, to im 31, 2016 to the present: 1. The processing notes for CoA Institute's FOIA request dated October 31, 20 1er non-harvest sources of mortality) of Passive Integrated Transponder (PIT)-tagged adult salmon and : PRFMC). Specifically, I'm requesting: 1) Documents sufficient to show the amount of time spent by WPI ry Management Council (WPRFMC). Specifically, I'm requesting: 1) Documents sufficient to identify the 'RFMC). Specifically, I'm requesting: 1) The WPRFMC formal books of accounts over the 5 years preceer ng copies of information as detailed below on behalf of the National Whistleblower Center (NWC), a non : mass stranding ("Stranding") of nearly 100 false killer whales at Hog Key, on Florida's southwestern co ;, or materials relating in any way to the management of these lands, including but not limited to consider) all communications—including, but not limited to, e-mail, instant messaging, Google hangouts or Goo;) all communications—including, but not limited to, e-mail,8 instant messaging, Google hangouts or Goc es, electronic mail records, or other documents, which were generated, received, kept, and/or considere es, electronic mail records, or other documents, which were generated, received, kept, and/or considere es, electronic mail records, or other documents, which were generated, received, kept, and/or considere 005 through the date that NMFS responds to this request, but excluding any documents already submitt 000 through the date that NMFS responds to this request. 1. Any reports, memoranda, correspondence, ional Flood Insurance Program ("NFIP"), administered by the Federal Emergency Management Agency | any potential, contemplated, proposed, or completed Endangered Species Act ("ESA") section 7 consu rolling Regulatory Costs," the February 2, 2017 OMB guidance entitled, "Interim Guidance Implementing ding April 11, 2016. Over the course of several years, NOAA has issued multiple Letters of Authorization rity): □ All video and photographs of injured or dead sea turtles and marine mammals □ All phc or agreements with private contractors that do the Marine Recreational Information Programs (MRIP), in is, affiliations signed between Barbara/Robert Billand and NOAA from 2009 until present. - Communica ai, Hawaii; their habitats; their health issues; and plans for research related to animal-borne diseases wh 1 NOAA) and intra office (between NOAA and external sources/entities) where the hawaiian monk seal F :ctfully request a copy of records, electronic or otherwise, pertaining to FOIA Case DOC-NOAA-2015-00 V LITTLE BULLY. A copy of the Captain of the Port Order 15-002 is attached. The undersigned attorney idence, reports and presentations) related to the "Avian Injury Study egg injection studies conducte taining, any audits or analyses of Northeast Analytical laboratory in Schenectady (now known as Pace A genta line from its navigational chart)HART MANUAL (2) Any and all documents or files associated with the charting of oil and gas structure: , Dupree Creek, Brunswick, GA sediment, Ampelisca abdita, amphipod, toxicity. Full quote regarding NC alendar Years 2015, 2016 and 2017. NOAA serves as the Chair of this Interagency Working Group. equest 1. All maps of Mississippi Canyon 20 in the Gulf of Mexico 2. All images of Mississippi Canyon 2I ;F), for copies of all internal and external communications concerning and regarding proposed wave or v ntain the "key words" Lake Michigan, Lake Michigan National Marine Sanctuary, Lake Michic tuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is I ments Designated or Expanded Since April 28, 2007; Notice of Opportunity for Public Comment" NOAA e National Oceanic and Atmospheric Administration's approval of Louisiana's State and Local Coastal R d into the cost of this FOIA (#2017-000414). As such, this FOIA has been narrowed to the production of wing information) that are in the possession or control of your agency. This request is subject to the foll the following subject be provided to me: ~ •Any and all communications. - documents, spreadsheets, su

meteorologists in Boston, New York, Philadelphia, and/or Washington on the afternoon of March 13, 2017. Testing was conducted by the National Weather Service. We understand that such testing has been conducted for the purpose of: (1) weather modification within the Weather Service Organization Workforce Analysis; (2) the reason for weather modification" as defined by federal law 15 U.S.C. §330, from 1971 (the date this federal law was enacted) to the present; (3) the reason for weather modification by NOAA employees since April of 2016 to the present: 1. Melinda Marquis [Melinda.Marquis@noaa.gov] (Melinda.Marquis@noaa.gov); 2. Kevin Kelleher [Kevin.Kelleher@noaa.gov] (Kevin.Kelleher@noaa.gov). We have received peer reviews of ten NOAA-developed climate assessment reports from NOAA and NOAA third-party contractor peer reviews of ten NOAA-developed climate assessment reports. The date listed on the request is July 25. We still have not received a formal debrief or any indication that the request is being processed. The request was received at the thirteenth Interagency Conference on Weather Modification, October 12-15, 1971, Skyland, Virginia. For more information, please contact: candice.jongsma@noaa.gov

On July 25, 2017, NOAA prepared scientific assessments of third-party (including NOAA) prepared scientific assessments. The NOAA Annual Greenhouse Gas Index found here: <http://www.noaa.gov/news/noaa-s-greenhouse-gas-index> (last updated 1/1/2015) originate with, or are sent to or from personnel in the following offices: Core of the Freedom of Information Act ("FOIA"), of the National Oceanic and Atmospheric Administration (the NOAA Enforcement Division in "THE MATTER OF U.S. DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OF CORAL REEF RESOURCES IN THE NORTHWEST PACIFIC OCEAN" and any final guidance concerning the retention of instant messaging sessions created or received through the NOAA COMMITTEE". I limit this search to an electronic search of emails in the email accounts of the NOAA COMMITTEE". I limit this search to an electronic search of emails in the email accounts of the Acting Secretary of Commerce for Oceans and Atmosphere) Ben Friedman, his senior advisor, special assistant, and any other NOAA employee. I limit this search to an electronic search of emails in the email accounts of the Acting Secretary of Commerce for Oceans and Atmosphere Benjamin Friedman: <http://www.noaa.gov/leadership/benjamin-friedman> I'm not sure if he has been involved in the 2017, its impacts on the world's climate, politics, environment and economy, the nation, etc. The Paris Climate Agreement, including, but not limited to, Agency Nos. 54-2012-01801, 54-2011-02074, 54-2011-00267 and all actions taken by any Agency employee, including but not limited to Mark Paese and Tahara Dawkins, not limited to application for employment, performance evaluations, wage earnings, disability records, attendance records, as well as any letters of reassignment to staff in Oregon or Washington. I am seeking records

[REDACTED]

Under the Freedom of Information Act, we request you provide us with a true and correct copy of the official records of the

Management Division (MC3); 325 Broadway, Boulder, CO 80305. The NOAA Contracting Officer was Mark. Appropriate. DOC/OIG informed me to contact NOAA FOIA to request more information into my complaint. I am interested in monument designations made by any President of the United States since January 1, 1996 (See Attachment 1) to adjust ship and buoy temperature data. 2. Any and all documents and records of communications (including copies of incoming and outgoing correspondence, which should include emails, between the National Oceanic and Atmospheric Administration on August 3, 2017, including but not limited to, the composition(s) of the materials dispersed and collected in NSDIS-OSP0-2016-0037, located in Suitland, Maryland, from January 1, 2016 to present, including but not limited to the recent global surface warming hiatus(es)). Please include e-mails, letters, hand-written notes, memos, and any other documents through January 20, 2017.

1. All correspondence (see <http://science.sciencemag.org/content/348/6242/1469>) from July 30, 2014 to February 4, 2017. I am interested in: (i) Management and Budget; (ii) Alan Risenhoover, Director of the Office of Sustainable Fisheries; or (iii) John Bullard, Regional Administrator for the Greater Atlantic Region; (iv) "Technical Guidance" regarding the extended closure of West Coast Dungeness crab fisheries. This includes but is not limited to: (v) Observer and Monitoring Conference in San Diego this year, along with an audio recording of the speaker's presentation to a NOAA Town Hall meeting held on or about September 15, 2015, in Providence, Rhode Island, regarding the Endangered Species Act. 2. All documents and communications to and from all NMFS staff, including divisional and/or non-pending investigations of the same. 2. All records referring or recommending Dale J. Jones (including attachments).

I am interested in NMFS correspondence (electronic and hard-copy) with Arinex Pty Ltd. regarding the conference, including any documents that is compatible with Excel or Access. Also, I would like to receive an electronic version of what is currently being issued by the State of Hawaii to NOAA Fisheries in 2016 and 2017. - all licenses and permits issued by NOAA Fisheries—internal or external to Commerce—concerning President Trump's Executive Order titled "Implementing a Strategy to Restore and Protect Endangered and Overfished Species ONLY.

Original source of evidence for my argument. Of course everything would be cited and fully referenced.

1. All records related to the Atlantic sturgeon in the Delaware River; NMFS/NOAA responses to requests for informal consultation

regarding any communications, from and/or to FWS related to the Hatchery; 2. Documents related to any consultation with Wild Earth Guardians (Feb. 17, 2010, available at: <http://www.nmfs.noaa.gov/pr/pdfs/petitions/kempstriation>), or elimination of existing marine species or habitat protections in federal waters off Alaska. Alaska Department of Fish and Game: that these documents be sent to me in any digital formats in which they exist, such as PDF. Under the Freedom of Information Act (5 U.S.C. § 552) and whether in written, electronic or other form (collectively herein, "Information") from NMFS regarding management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries Conservation System standards set forth at 50 C.F.R. § 680.20(g) and/or (b) the Alaska state minimum wage in "records" as defined in this Request, including without limitation all inter and intra agency communications (including memos, reports, or other) of seal RW08 from the time the camera was attached until its drowning, broken down by date from 2013 to the present. 2. All records related to the effect on endangered winter-run chinook salmon, threatened

data related to Cook Inlet or any Cook Inlet species that was gathered, created, or received by the National Oceanic and Atmospheric Administration, that were made in response to observer reports - documentation notebooks or field journals; 2. All records related to the biological evaluation of chlorpyrifos under the Endangered Species Act, 16 U.S.C. §§ 1531-1544 ("Implementation of the Nationwide Permits. We are particularly interested in obtaining the proposed decision documents and any other documents that they exist. Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in electronic form, we request you provide us with a true and correct copy of the official records of the document in its original format, including any attachments, and any other documents that are related to the document.

Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in electronic form, we request you provide us with a true and correct copy of the official records of the document in its original format, including any attachments, and any other documents that are related to the document.

Ocean under the Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1389 ("MMPA"), from Jar
d by NMFS relating to the reopening of the red snapper season, between the dates of January 20, 2017
program from which the observers are deployed. " Through the Freedom of Information Act, I request tl
No. 1, a US-flagged Patagonia Toothfish longline vessel then owned by Lawrence Lasarow, PacFish, Ir

W-WA (061417). All public disclosure records requests made to NATIONAL MARINE FISHERIES SERV
Species Act, 16 U.S.C. §§ 1531-1544 ("ESA").

Director Nathan Lagerwey, OLE, Alaska Division, Deputy Special Agent in Charge to or from James W. B
"the Project"). This includes, but is not limited to, all internal and external emails and other co
s of any information used to inform the development of the following national monument proclamations
port the orca Tilikum pursuant to the Marine Mammal Protection Act (MMPA), from July 7, 2014, to the p
16, tracking number DOC-NOAA-2017-000168, and the NOAA Tasker memorandum regarding or relate
steelhead between Bonneville dam on the Columbia River and the Lower Granite dam on the Snake Riv
RFMC staff on lobbying activities from 2014 to 2017. By lobbying activities, I am referring to any e
name and position of all WPRFMC staff for the 5 years preceding a response to this request. 2) For eac
ding a response to this request, including a cash receipts and disbursements journal, a general journal,
profit organization focused on advocating for whistleblowers. 1. I am requesting any and all documents
ast, on or about January 14, 2017. I respectfully request the following records from NMFS: 1. All records
ration of amending, revising, repealing, or replacing the 2016 plans between or among any officer, repre
gle chat messages, text messages, SMS messages, Blackberry messages, Skype messages, handwrit
gle chat messages, text messages, SMS messages, Blackberry messages, Skype messages, handwrit
d by NMFS Southeast Regional Office relating to: 1. The data sources used to estimate the bycatch of s
d by NMFS relating to: 1. The data sources used to estimate shark bycatch in the Gulf of Mexico reef fis
d by NMFS relating to: 1. The data sources used to estimate shark bycatch in the HMS pelagic longline
ed by NMFS in response to EcoRights' FOIA request dated July 20, 2016 (DOC-NOAA-2016-001479). 1
, or other documents (including electronic mail messages) concerning any Endangered Species Act ("ES
("FEMA"), causes, promotes, or leads to development (i.e., human modification of the landscape, includ
ltations (16 U.S.C. § 1536) that have been initiated or proposed, including Biological Opinions, Biologica
Section 2 of the Executive Order of January 30, 2017, Titled 'Reducing Regulation and Controlling Reg
("LoA") and Incidental Harassment Authorizations ("IHA") for Level B takes of Cook Inlet beluga whales
tograph of injured or dead seabirds (up to 10 per year/species) All photographs of each fish spec
cluding but not limited to the telephone survey operator and the dockside-intercept program; 3. All mater
itions between Barbara/Robert Billand and NOAA from February 2017 until present. -----
ich may affect them. The dates for records requested vary for the different topics, but general range is J
912-Nihoa-Sally is mentioned from June 28th 2016 until present.

1589. I respectfully request all case processing notes, documents relating to the fee calculation, memos
has been retained by SeaTow Islamorada. SeaTow Islamorada was contracted to provide services to L
d in 2006 and 2007 Hudson River PCBs Superfund Site Natural Resource Damages Trustees ("T
nalytical) relating to PCB analysis of Hudson River fish between Jan. 1, 2012 and Oct. 31, 2015.

s in Quarantine Bay, Louisiana, as depicted on NOAA/NOS/OCS Chart # 11364 and/or US Coast and G
DAA report to give context: In 1994, NOAA obtained sediment samples from estuarine settings in the Te

0 in the Gulf of Mexico, including photographs, Sonar, or any other imaging techniques 3. All reports of s
vind energy projects offshore California between January 1, 2010, to date. This request includes, but is r
an NMS, Wisconsin, or any combination of those words related to the creation of an National Marine Sa
imited to the time-frame between January 1, 2016 and the time this request is processed. For this requ
stated: "The Department of Commerce will receive a copy of and consider all public comments submitte
esources Management Act of 1978 and/or Louisiana's Coastal Resources Program. 2. Any and all recor
the native MATLAB files used in the publication, L. Jay Field et al., Re-visiting projections of PCBs in Lo
owing definitions and limitations: The "Lower Columbia River" as used herein means the Col
bmissions, agreements, or other records concerning or related to Space Data· s proposal to the

7 about reductions in predicted snow amounts or about computer models that cut predicted snow amount by the NWS at Sterling, Virginia and possibly at one or more locations in Alaska, and that the report major adoption of the "Operations and Workforce Analysis (OWA) Project: Charter for All Workstream is enacted) to the present.

2. Kevin Kelleher [Kevin.Kelleher@noaa.gov] 3. Jennifer Mahoney [Jennifer.Mahoney@noaa.gov] 4. Jennifer Mahoney [jennifer.mahoney@noaa.gov], that pertain to the following subjects; 1. The NEW that NOAA knew or had reason to know the EPA Administrator would use as the scientific foundation, safety I would like: 1) A copy of a report and all supporting documents. 2) Any email relating to the Verge a request has been reviewed. Our earlier request is below: Michigan Tech kindly requests a formal debrief Author: Interagency Conference on Weather Modification (13th : 1971 : Skyland, Va.) Publisher: U.S

-up-40-percent-since-1990 I would prefer to receive these in electronic format if possible.

Communications Legislative and Intergovernmental Affairs c) include one or more of the following terms: "Agency"). Specifically, EDF requests: 1) all directives and guidance to Agency scientific staff that relate to OCEANIC AND ATMOSPHERIC ADMINISTRATION Agency, v. CHARLES MINCEY, JR, Respondent, Hawaiian Islands, 24 O.L.C. 183, 184 & n.1 (2000). • Memorandum for Randolph Moss, Assistant to the "Google Chat" or "Google Hangouts" feature of the National Oceanic and Atmospheric Administration Acting Administrator Ben Friedman, and those of his Senior Advisor, Special Assistant, Chief of Staff, Deputy Administrator Ben Friedman, and those of his Senior Advisor, Special Assistant, Chief of Staff, Deputy Chief of Staff, Deputy Chief of Staff and Policy Director, between the dates of July 1, 2017, and the date that Administrator Ben Friedman, and those of his Senior Advisor, Special Assistant, Chief of Staff, Deputy Chief of Staff, Deputy Chief of Staff and Policy Director, between the dates of July 1, 2017, and the date that he was in that role since January 1, though. If he has, then I would like his calendar for that time period. If someone is an agreement within the United Nations Framework Convention on Climate Change (UNFCCC), 11-54-00066, 10-54-00811, 10-54-00339, and 08-54-00092. Copies of any and all communications and records, to address, respond, and/or comply with the successful finding of discrimination in the EEO compliance records, vacation and/or sick time taken, workers' compensation claims; copies of any and all records since March 1, 2017.

January 20, 2017 to the date of the search.

and June 19, 2017. This includes documents, records, and materials regarding: 1. extension or reopening of the following documents: A summary of all complaints of violence, threats, or harassment against fisheries. I met the vessel in Spain September 28, 2003, sailed for the Southern Ocean to test CCAMLR seabird

in the Pacific Northwest/Washington State) by any of the entities listed below: 1. Any and all representati

alsiger – NOAA, Alaska Regional Administrator Robert D. Mecum – NOAA, Alaska Deputy Regional Administrator. All communications pertaining to the Project, all NOAA meeting notes and minutes regarding or discussing the Project or expansions during the specified time periods: Northeast Canyons and Seamounts Marine National Monument, excepting correspondence between the agency and PETA, the Animal Welfare Institute, and the National Marine Fisheries Service in response to this request. 2. The processing notes for CoA Institute's FOIA request dated October 31, 2016, regarding the effort to influence legislation or executive action, including indirect or grassroots lobbying. 2) All WPRFM documents identifying the person identified, documents sufficient to identify the individual's employment status, including but not limited to a general ledger, in the greatest level of detail available without need for redaction. I would like this information regarding the Lacey Act Reward Fund and/ or the Lacey Act Reward Account (hereinafter referred to as "Lacey Act Reward Fund") relating to the facts surrounding the Stranding, including how the event was discovered, the condition of the stranding, representative, or agent of the U.S. Department of Commerce, the National Marine Fisheries Service or NOAA. 3) All notes, or communications through any other media—sent or received by the following individuals for the following fisheries: 1) All notes, or communications through any other media—sent or received by any and all NOAA employees regarding the shark fishery in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Southeastern Atlantic shark fishery (bottom longline and vertical line) and the Southeastern Atlantic snapper-grouper fishery (bottom longline and shark bottom longline fisheries. 2. Logbook data related to shark bycatch, by species, in the HMS Sigsbee. 3) All reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning the implementation of section 7 consultations (16 U.S.C. § 1536) that have been initiated or proposed, including Biological Assessments, Biological Evaluations, or informal consultations, pertaining to the implementation of the National Marine Fisheries Service's "Regulatory Costs," or the April 5, 2017 Office of Management and Budget (OMB) guidance entitled, "Implementation of the Marine Mammal Protection Act ("MMPA") incidental to anthropogenic activities in Cook Inlet. 4) All photos of species discarded dead (up to 10 per year/species) and all photos (Prioritizing images of sea turtles and marine mammal carcasses) used to formulate a bid request or RFP for the contractors handling the MRIP, including but not limited to the following: ----- Under the Freedom of Information Act I would like to know any and all documents, reports, memoranda, correspondence, or other documents (including electronic mail messages) received by the agency from January 1, 2006 to present.

including, but not limited to, emails, inter-agency communications, etc. that may pertain to my request.

including, but not limited to, the LITTLE BULLY and its barge while grounded.

including, but not limited to, the Trustees' records, as well as all information generated by the Trustees as part of the 2008, 2009 and any other

including, but not limited to, NOAA Electronic Navigation Chart (ENC) US4LA35M for the years 2000-2009 for the Perry Creek and Back River areas and analyzed these samples for acute toxicity to the marine amphipod *Ampelisca*

including, but not limited to, studies conducted at Mississippi Canyon 20 in the Gulf of Mexico

including, but not limited to, any policy-development discussions for these types of energy projects, and/or discussions regarding the sanctuary in Lake Michigan. The period for the requested emails is January 1, 2017 through July 31, 2017. In addition, the term "all records" refers to, but is not limited to, any and all complaints submitted to the Monterey Bay Aquarium during the Department of the Interior's public comment period for Executive Order 13792 for Marine National Monuments, photographs, correspondence, documents, including email communication, related to every periodic survey of Hudson River fish using model emulation, Science of the Total Environment 557-558:489-501 (July 2007) regarding the Columbia River from river mile 0 to river mile 146--i.e., below the Bonneville Dam. The "Willamette River" includes, but is not limited to, any and all records regarding Space Data's Stratospheric Nano Satellites ("SNS") system and/or the N

nts, for any storm occurring on March 13, 2017 or March 13-14, 2017. 2. Any records about a realization
y be located in or maintained by Joe Pica, the Director of the NWS Office of Observations. 2. Document
1 Core Teams" a copy of which is attached.

Stanley Benjamin [Stan.Benjamin@noaa.gov] That pertains to the following subjects: 1. The reasons
S [National Energy with Weather Systems] project, 2. The future direction of the NEWS project, 3. Plans
in part, of the Clean Air Act endangerment analysis the EPA had been required to undertake in respons
article 3) Any email communication between the authors of the report and any representatives of DJI 4) /
rief on the CILER21 proposal that was not selected for funding. NOAA-OAR-CIPO-2017-2005127 - canc
. Dept. of Commerce, National Oceanic and Atmospheric Administration Pub date:[1971?] NOAA Centr

quot;embargo" "embargoed until" "press conference" "press briefing&
e to public communication about scientific research or findings; 2) all questionnaires or other solicitation.
Docket No. SE1305037. The two briefs were designated by hearing Judge Christine Coughlin as Ag.Ini.
Attorney General, Office of Legal Counsel, from John Leshy, Solicitor, Department of the Interior, James
n's ("NOAA") Unified Messaging System (i.e., NOAA's Google-hosted agency e-mail platform). Accordi
eputy Chief of Staff and Policy Director. I limit this search to the dates July 1, 2017 to the present.
Chief of Staff and Policy Director. I limit this search to the dates July 1, 2017 to the present.
is request is fulfilled with the following search terms: n "climate assessment" n "advisory committee" A cc
Chief of Staff and Policy Director. I limit this search to the dates July 1, 2017 to the present.
omeone else has been the Administrator or the acting Administrator of NOAA during that time, I would lik
IFCCC) dealing with greenhouse gas emissions mitigation, adaptation and finance starting in the year 20
nd documentation, drafted, sent, received, and/or maintained by the EEO Counselor(s) for any and all E
aint filed by Thomas Smith (EEO Appeal No. 0120130553, Agency No. 54-2009-00092).
doctor's reports, doctors notes concerning medical/physical limitations; and reports of physical examina

[REDACTED]
ing the Cheniere Ronquille Barrier Island Coastal Restoration Project FED NO. BA-76 and the pipeline sp

n requesting NOAA FOIA to provide me with the management follow up records and the closing records
Order No. 13792, 82 F.R. 20429 (Apr. 26, 2017), "Review of Designations Under the Antiquities Act" (S
other global temperature datasets for both NOAA's in-house dataset improvements and monthly press r
he Office Of Science & Technology Policy, within the Executive Office of the President, from Febru
uspect that the materials dispersed include at least Welsbach and Welsbach-like materials (such as the
any and all documents and com_munications which refer or relate to potentially placing Thomas E. Smil

lowing entities concerning industry funding for the Northeast Multispecies Fishery's At-Sea Monitor Prog
r GARO. The time period for this request is January 1, 2014 to the present.² Please restrict your search
S relied upon in the Technical Guidance, including scientific documents, studies, and reports. 2. Technic
merce and between the DOC and external agencies.

uest), including &mdot; but not limited to all written comments, as well as all communications with non
See attached for full request and fee waiver request.
gnment. 3. All records regarding John Yates and/or Sandy Yates including without limitation the investig

ween NOAA Fisheries and the State of Hawaii regarding usage/posting/setting of NOAA signs, fences, e
ns to "Incidental Take Authorization requests, including Incidental Harassment Authorizations and Letter

requests for formal consultation for projects or initiatives that would impact the Atlantic sturgeon in the D

any final or draft biological assessment, final or draft biological evaluation, final or draft biological opinior
OAA to consider, evaluate, formulate a response and respond to the petition including, without lim
slands Coral Habitat Protection Areas; Aleutian Islands Habitat Conservation Area; Bowers Ridge Habita
e released in that format upon request.

nchus mykiss (i.e., that anadromous form of the species listed as endangered under the federal Endang
documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational se
de without limitation correspondence to or from: (i) employees of NMFS and the office of National Ocear
FY 2018-2022 Office of Law Enforcement Priorities (Draft) ("Report"): all records used, considered or re
en HMMA/HMAR volunteers and other members of the public - location and date; + All communications
of Reclamation to meet the demands of the Sacramento River Settlement Contracts from 2013 to the pi

< Inlet General Permit for Oil and Gas Production and Development Facilities ("General Permit")), and 2.
s – which pertain to the following vessel conditions on board the Hawaii-based and American Samoa-ba
of malathion under the ESA; 3. All records mentioning, including, and/or referencing the draft and/or fin

ing of the private recreational red snapper season; 2. how or whether this action would affect progress to
as observers in US fisheries observer programs that occurred in calendar year 2013, 2014, 2015, and 2016
rd mitigation measures to be confirmed prior to entry into a CCAMLR Ross Sea experimental fishery. My

ves and employees of Smith & Lowney PLLC law firm of Seattle, Washington; 2. Any and all representat

ministrator Glenn G. Merrill – NOAA, Alaska Region Sustainable Fisheries Fish and Wildlife
ie Project, and any and all memoranda, agreements, notes, letters, and responses relating to or
onument (01/01/14 – 12/31/16) Papahānaumokuākea Marine National Monument Expansion (01/01/14 -
eir representatives. This request includes, but is not limited to, memoranda, reports, notes, letters, email
cking number DOC-NOAA-2017-000169, and the NOAA Tasker memorandum regarding or related to th
to this request, specifically including (but not limited to): ☐ Emails, notes, and other correspondence betw
C letters, testimony, or presentations for federal or state legislators, the President, or state governors fo
t limited to whether the individual is a contractor, volunteer, or federal employee and whether the individ
record(s) provided in electronic format; if the information cannot be exported in an Excel or comma-delir
the “Lacey Act Reward Fund” or “Fund”). In particular, I am requesting: a. Any and all documents regard
of the animals, any efforts made to assist the animals, and mortality data. 2. All records relating to any in
VA Fisheries, the U.S. Environmental Protection Agency, as well as documents or communications with:
the time period of April 17, 2017 through April 24, 2017: ☐ John F. Quinn ☐ E.F. “Terry” Stockwell III ☐
æes who attended the April 18–20, 2017 NEFMC meetings in their official capacity. The time period for th
ntic snapper-grouper fishery (bottom longline and vertical line). 2. Logbook data regarding the bycatch (c
om longline and vertical line) in the First Edition of the U.S. National Bycatch Report and the First and Se
hark bottom longline and pelagic longline fisheries. 3. Observer data and reports related to shark bycatc
concerning any potential, contemplated, proposed, or completed Endangered Species Act (“ESA”) sectic
l Opinions, Biological Assessments, or informal consultations, or any study or analysis to determine if co
a. 2. Any reports, memoranda, correspondence, or other documents (including electronic mail message
National Flood Insurance Program (“NFIP”) by the Federal Emergency Management Agency (“FEMA”)
menting Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs.’” This rec
Please provide the following documents in your possession, whether received, created, and/or distribute
s for the HI SSSL) ☐ Data collected by the NMFS-Pacific Islands Regional Observer Program for all spec
ted to the telephone survey operator and the dockside-intercept program; 4. All materials, programs, po
uld l

post-2009 avian egg injection work. 2. All information (including work plans, quality assurance plans, vali

1960-2016 (3)For the years 1960-2016, any and all copies of documents provided by the US Army Corp
Ampelisca abdita (NOAA, 1994). Results indicated that sediments from Terry Creek exhibited sediment

ons of the fiscal implications to the national marine sanctuary program, or to individual sanctuary sites, a

Bay National Marine Sanctuary (via email, mail, fax, and phone) about wildlife being harassed or distur
National Monuments that are affected by Executive Orders 13792 and 13795.” 82 Fed. Reg. 28827. Plea
evaluation by the National Oceanic and Atmospheric Administration of Louisiana’s State and Local Coa
2016), and as time permits, John Kern and Jay Field will organize and provide computer code to read th
ver" as used herein refers to the Willamette River from river mile 0 to river mile 28--i.e., below Will
JWS's radiosonde upper air observation system. • Any and all communications, documents, spreadshee

1 or conclusion by National Weather Service meteorologists on or before the afternoon of March 13, 201
ts that reveal the cost of the Vaisala radiosonde autolaunchers procured by the National Weather Service

3 behind the cancellation of the NEWS (National Energy with Weather System) project 2. The decision
s of the NEWS project after October 1, 2016, 4. CIRES employee Christopher T M Clack, 5. Budget info
se to the U.S. Supreme Court's decision in Massachusetts v. EPA, and of the positive 2009 Clean Air Act
Any email communication between NOAA, the Dept of Commerce and DJI concerning the article 5) Any
dice.jongsma@noaa.gov
al Library Call number: QC926.6 .I5 1971

quot; "press call" "press event" "press strategy" "presser"
s of information sent to Agency scientific staff that relate to (Br. and Ag.Rep.Br. The Mincey hearing was held July 15-16, 2014, at Georgetown, S.C.
3 Dorskind, General Counsel, National Oceanic and Atmospheric Administration, and Dinah Bear, General
ng to a March 2012 handbook, "[p]er the decision of NOAA General Counsel," communications through

copy of each email that includes the phrase "CLIMATE ASSESSMENT" or the phrase "ADVISORY COMM

re their calendar too. In other words, the schedule of whoever was in charge of NOAA each day from Ja
20. It was negotiated by representatives of 196 parties at the 21st Conference of the Parties of the UNF
EO complaints filed by, or on behalf of, Thomas Smith, against the Agency, including, but not limited to,

tions.

[REDACTED]
bill which occurred on 5 September 2016. This request is

(resolution) for my complaint #17-0469-N. I have not been contacted by anyone in NOAA regarding
see Attachment B. Presidential Executive
releases conveying information to the public about global
January 3, 2017, through the present date
(oxides of metals), coal ash
Dale J. Jones, Jr., in the Physical

to communications
analytical tools and models

government

active files of Dale J. Jones, Jr., John Jones

etc. from January 2017 until
"Statement of Authorization" for seismic surveys. See Ex. A § 9. This includes but is not limited to records that are

Delaware River; NMFS/NOAA responses to requests

1, and

at Conservation Zone; Alaska Sea

Endangered Species
reason; 2. Communications pertaining
to the National Oceanic and Atmospheric Administration General Counsel (NOAA)
referred to by
and reports related to Seal selection assessment
present.

. All correspondence, electronic or written
used longline vessels and the
biological evaluation of diaz

oward rebuilding under the red snapper rebuilding plan; 3. how or w
2016, separated by: 1. Year; 2. Whether the complaint was i
/ time on board this vessel was from September 28, 200

tives and employees of Puget

discussing the Project, whethe
- 12/31/16) Pacific Remote Islands Marine National Mo
Is, and other correspondence.
his request. 3. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tracking r
ween and among "NOA
r the 10 years prec
ual serv
nited format, please let
ding the Fund's creation (including but not limited to the specif
vestigation, whether conducted by NMFS or other
Any member of the White House and/or white hous
Mark Alexander □ Matthew McKenzie □ Terry Alexander □ Vincent Balzano □ Mary Beth Nickell-Tooley
his request is April 17, 2017 through April 24, 2017. The list of individuals should include, but not be limit
of sharks, by species, in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Sc
cond Updates to the National Bycatch Report. 2. Logbook data used to estimate shark bycatch, by spec
h, by species, in the HMS
on 7 consultations (16 U.S.C. § 1536) that have bee
nsultation
is) submitted to NMFS by FEMA, the U.S

quest includes both records related to implementation generally
d by NOAA: (
ies, including
wer points, manuals or like materials used to train person

dated and unvalidated

s of Engineers to NOAA/NOS/OCS (and specifically the NOS Marine Charting Divisi
toxicity to *A. abdita* tha

nd

bed by drones or unmanned aeria
ise provide the copies of the comments received by NOAA from the Depart
ostal Resources Management Act of 1978 an
re data files and produce relevant inputs/assumptions/informati
lamette Falls. This r
ts, submissions, agreements, or other records conc

7, that a winter storm was not likely to produce snow totals in northeastern cities in general, or in B
e; estimated cost of installation per unit; and estimated cost of

1 making process of the cancellation
rmation on the Wind Boundary Layer [WBL] or Atmospheric
t GHG Endangerm
between NASA and the Verge reporter. 6) Any documents relating to

"media event" "media call" "

ral Counsel, Council on Environmental Quality, Re: Request for Opini
Google Chat (or Google Hangouts) "will be con

1

nuary 1 to the present. ----
CCC in Paris and adopted by consensus on 12 December 2015.
Agency Nos. 54-2015-00137, 54-2014-



e or reflect: NOAA's evaluation of applications for incidental harassment authorizations (IHAs) for seis

Number DOC-NOA

by: Mark Gibson, Eric Reid, Rick Bellavance, David E. Pierce, Michael Sissenwine, Elizabeth E.
Submitted to: John Bullard, Michael Pentony, Elizabeth Chilton, Amy Martins, J. Michael Lanning, John
Southeastern Atlantic snapper-grouper fishery (bottom longline and vertical line). 3. Observer data regarding
species, in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Southeastern Atlantic
snapper-grouper fishery.



omic airgun surveys in the Mid- and South Atlantic Planning Areas; and communications with applicants

trie □ John Pappalardo □ Douglas Grout □ Peter T. Kendall □ Mark Godfory □ Thomas A. Nies □ Chris
r Hare □ Moira Kelly □ Carrie Nordeen
ng the bycatch of sharks, by species, in the Gulf of Mexico reef fish fishery (bottom longline and vertical
tic snapper-grouper fishery (bottom longline and vertical line) in the First Edition of the U.S. National Byc
y. 5. The number of vessels that have both a directed shark permit and a directed reef fish or directed si



seeking IHAs for seismic surveys, and/or with any other industry group regarding the Executive Order a:

Christopher Kellogg □ Sandra Stone □ Janice Plante □ Andrew Applegate □ Michelle Bachman □ Deirdre B

line) and the Southeastern Atlantic snapper-grouper fishery (bottom longline and vertical line) and any a
atch Report and the First and Second Updates to the National Bycatch Report. 3. Observer data used to
napper-grouper permit in the Gulf of Mexico and Southeastern Atlantic. 6. The number of vessels that h:



s it applies to authorizations for the taking of marine mammals inc

oelke □ Jamie Cournane □ Rachel Feeney □ Lou Goodreau □ Demet Haksever □ Fiona Hogan □ Jonz

associated observer reports or characterizations of the f
o estimate shark bycatch, by species, in the Gulf of Mexico ree
ave both an incidental permit to land sharks and a directed reef fish



athon Peros □ Naresh Pradhan □ Rob

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, September 7, 2017 3:32 PM
To: Stephen Lipps - NOAA Federal; Holmes, Colin; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal; Jeff Dillen - NOAA Federal; Kristen Gustafson - NOAA Federal; Robert Hogan; _DUS Staff
Cc: Tom Taylor; Kimberly Katzenbarger - NOAA FEDERAL; Charles; Dennis Morgan - NOAA Federal; Stacey Nathanson - NOAA Federal; Robert Swisher - NOAA Federal; Steven Goodman - NOAA Federal; Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Zachary Goldstein - NOAA Federal; Douglas Perry - NOAA Federal; Nkolika Ndubisi - NOAA Federal; Jeri Dockett - NOAA Affiliate; Cc: OCIO/OPPA; Lawrence Charters - NOAA Federal; Allison Soussi-Tanani - NOAA Federal; Bogomolny, Michael (Federal); Roxie Allison-Holman - NOAA Federal; John Almeida - NOAA Federal; Michael Weiss - NOAA Federal
Subject: Weekly FOIA Incoming and High Visibility Requests
Attachments: Weekly FOIA Incoming and High Visibility Requests 9.1.17 to 9.7.17.xls; Re-Filed JW v. DOC Complaint.pdf

Good Afternoon,

Attached is the weekly report.

One request, submitted by Sea Shepherd Legal, is one of several recent requests seeking information about the mass false killer whale stranding at Hog Key, Florida. (DOC-NOAA-2017-001798). This issue received a significant amount of news coverage (see the related CNN article here: <http://www.cnn.com/2017/01/17/us/falke-killer-whales-death-trnd/index.html>).

A request was also received from the Center for Biological Diversity seeking information on the 4th National Climate Assessment, which also has received some media attention. (DOC-NOAA-2017-001798). (see related NYT link here: <https://www.nytimes.com/interactive/2017/08/07/climate/document-Draft-of-the-Climate-Science-Special-Report.html?mcubz=1>).

In the second *Judicial Watch v. DOC* litigation, NOAA has issued an additional interim release. The original request sought all records of communications between NOAA Scientist Tom Karl and OSTP Director John Holdren. A copy of the complaint is attached.

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.

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

JUDICIAL WATCH, INC.,)	
425 Third Street SW, Suite 800)	
Washington, DC 20024,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	
UNITED STATES DEPARTMENT)	
OF COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, DC 20230,)	
)	
Defendant.)	
)	

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Commerce to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Judicial Watch, Inc. is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street SW, Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. As part of its mission, Plaintiff regularly requests records from federal agencies pursuant to FOIA. Plaintiff analyzes the

responses and disseminates its findings and the requested records to the American public to inform them about “what their government is up to.”

4. Defendant U.S. Department of Commerce is an agency of the United States Government. Defendant has possession, custody, and control of records to which Plaintiff seeks access. Defendant is headquartered at 1401 Constitution Avenue, NW, Washington, DC 20230.

STATEMENT OF FACTS

5. On February 6, 2017 Plaintiff submitted a FOIA request to the National Oceanic and Atmospheric Administration (“NOAA”), a component of Defendant, seeking the following:

Any and all records of communications between NOAA scientist
Thomas Karl and Director of the Office of Science and
Technology Policy John Holdren.

The timeframe of the request was identified as “January 20, 2009 through January 20, 2017.”

The request was submitted by certified mail.

6. According to U.S. Postal Service records, the request was received by NOAA on February 7, 2017.

7. NOAA confirmed that it received the request on February 8, 2017, assigning the request Tracking Number DOC-NOAA-2017-000580.

8. As of the date of this Complaint, Defendant has failed to: (i) produce all the requested records or demonstrate that the requested records are lawfully exempt from production; and (ii) notify Plaintiff of the scope of responsive records Defendant intends to produce or withhold and the reasons for any withholdings.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

9. Plaintiff realleges paragraphs 1 through 8 as if fully stated herein.

10. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with FOIA.

11. To trigger FOIA's administrative exhaustion requirement, Defendant was required to determine whether to comply with Plaintiff's request by March 31, 2017 at the latest. At a minimum, Defendant was required to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendant intended to produce or withhold and the reasons for any withholdings; (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination; and (iv) make the records available promptly thereafter. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

12. Because Defendant failed to determine whether to fully comply with Plaintiff's request within the time period required by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records to Plaintiff's FOIA request and a Vaughn index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: June 29, 2017

Respectfully submitted,

s/ Chris Fedeli

Chris Fedeli

D.C. Bar No. 472919

JUDICIAL WATCH, INC.

425 Third Street SW, Suite 800

Washington, DC 20024

(202) 646-5172

Counsel for Plaintiff

Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2017-001812	Request	Andrew Ramos-Flynn	Leadership Directories, Inc.	09/06/2017
DOC-NOAA-2017-001798	Request	Brett Sommermeyer		08/31/2017
DOC-NOAA-2017-001796	Request	Margaret Townsend	Center for Biological Diversity	08/31/2017

Custom Report - 09/07/2017 03:10:08

Received	Assigned To	Case File	Assigned To	Perfect?	Due	Closed Date	Status
09/06/2017	NOAA	NOAA		No	TBD	TBD	Assignment Determination
08/31/2017	NOAA	NOAA		No	TBD	TBD	Initial Evaluation
08/31/2017	NOAA	NOAA		No	TBD	TBD	Assignment Determination

Dispositions

Detail

I am submitting this Freedom of Information Act request to request a copy of documents containing the following in
Please see attached file for description of records request.

All records mentioning, including and/or referencing timing for release of 4th National Climate Assessment, whethe

information be provided to me: A list of agency credit card and purchase card holders. Specifically, please
or it will be issued in final form by the statutory deadline, obstacles for completing by the deadline, and w

provide the name, title, phone number, email address, and office for each credit card and purchase card. Whether the recent decision to terminate the 'Advisory Committee for Sustained National Climate Assessment' is a good idea.

rd holder. We request this information in digital or electronic format. In order to help to determine my sta
nent' will impact the date for issuance of the final 4th National Climate Assessment.

itus to assess fees, you should know that I am affiliated with Leadership Directories, Inc., a private corp

ration, and I am seeking information for us

Kolsky, Joshua (USADC)

From: Kolsky, Joshua (USADC)
Sent: Thursday, September 7, 2017 5:03 PM
To: Bogomolny, Michael (Federal)
Cc: Graff, Mark (Federal); Nathanson, Stacey (Federal); Almeida, John (Federal)
Subject: RE: Proposed Schedule COA FOIA
Attachments: JSR.docx

Michael,

(b)(5)

Thanks,
Josh

From: Bogomolny, Michael (Federal) [mailto:MBogomolny@doc.gov]
Sent: Wednesday, September 6, 2017 6:26 PM
To: Kolsky, Joshua (USADC) <JKOLSKY@usa.doj.gov>
Cc: Graff, Mark (Federal) <Mark.Graff@noaa.gov>; Nathanson, Stacey (Federal) <Stacey.Nathanson@noaa.gov>; Almeida, John (Federal) <John.Almeida@noaa.gov>
Subject: Re: Proposed Schedule COA FOIA

(b)(5)

On Sep 6, 2017, at 6:22 PM, Kolsky, Joshua (USADC) <Joshua.Kolsky@usdoj.gov> wrote:

Thanks (b)(5)

From: Bogomolny, Michael (Federal) [mailto:MBogomolny@doc.gov]
Sent: Wednesday, September 6, 2017 6:10 PM
To: Kolsky, Joshua (USADC) <JKOLSKY@usa.doj.gov>
Cc: Graff, Mark (Federal) <Mark.Graff@noaa.gov>; Nathanson, Stacey (Federal) <Stacey.Nathanson@noaa.gov>; Almeida, John (Federal) <John.Almeida@noaa.gov>
Subject: RE: Proposed Schedule COA FOIA

Josh,

My apologies for the late respons (b)(5)

- [REDACTED]
- [REDACTED]
- [REDACTED]

Sincerely,
bogo

From: Kolsky, Joshua (USADC) [<mailto:Joshua.Kolsky@usdoj.gov>]
Sent: Wednesday, September 06, 2017 5:53 PM
To: Nathanson, Stacey (Federal) <Stacey.Nathanson@noaa.gov>; Almeida, John (Federal) <John.Almeida@noaa.gov>
Cc: Bogomolny, Michael (Federal) <MBogomolny@doc.gov>; Graff, Mark (Federal) <Mark.Graff@noaa.gov>
Subject: RE: Proposed Schedule COA FOIA

H (b)(5) [REDACTED]

From: Kolsky, Joshua (USADC)
Sent: Tuesday, September 5, 2017 3:16 PM
To: 'Stacey Nathanson - NOAA Federal' <stacey.nathanson@noaa.gov>; John Almeida - NOAA Federal <john.almeida@noaa.gov>
Cc: Bogomolny, Michael (Federal) <MBogomolny@doc.gov>; Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Subject: RE: Proposed Schedule COA FOIA

(b)(5) [REDACTED]

Thanks,
Josh

From: Stacey Nathanson - NOAA Federal [<mailto:stacey.nathanson@noaa.gov>]
Sent: Tuesday, September 5, 2017 9:48 AM
To: John Almeida - NOAA Federal <john.almeida@noaa.gov>
Cc: Kolsky, Joshua (USADC) <JKOLSKY@usa.doj.gov>; Bogomolny, Michael (Federal)

<MBogomolny@doc.gov>; Mark Graff - NOAA Federal <mark.graff@noaa.gov>

Subject: Re: Proposed Schedule COA FOIA

(b)(5)
[Redacted]

[Redacted] Thanks!

Stacey

Stacey Nathanson
Attorney-Advisor
NOAA Office of the General Counsel
Fisheries and Protected Resources Section
Phone: 301-713-9673
Email: Stacey.Nathanson@noaa.gov

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On Tue, Sep 5, 2017 at 8:57 AM, John Almeida - NOAA Federal <john.almeida@noaa.gov> wrote:

(b)(5)
[Redacted]

(b)(5)

(b)(5)

(b)(5)

(b)(5)

Laurie Mukai - NOAA Federal

From: Laurie Mukai - NOAA Federal
Sent: Thursday, September 7, 2017 6:38 PM
To: Samuel Dixon - NOAA Affiliate
Cc: Mark Graff - NOAA Federal
Subject: Re: FOIA 2017-001345 B - Invitation to collaborate
Attachments: FOIA 2017-001345 Partial Release Letter Final_2.docx

Hi Sam-

Based upon the information that Mark found regarding the two emails, I went back to research them.

■ (b)(5)

■ [Redacted]

[Redacted]

[Redacted]



FINAL FULL RELEASE 2017-001345 index-Mark.xlsx

--

Laurie Mukai
NOAA/NMFS/NWFSC
2725 Montlake Blvd. East
Seattle, WA 98112.2097
[206.860.3438](tel:206.860.3438)
[206.860.3217](tel:206.860.3217) fax
laurie.mukai@noaa.gov
<http://www.nwfsc.noaa.gov>

On Thu, Sep 7, 2017 at 4:44 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Guys--

(b)(5)

(b)(5)

Otherwise--looks good. Thanks guys

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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On Wed, Sep 6, 2017 at 7:47 PM, Laurie Mukai - NOAA Fe... (via Google Drive) <drive-shares-noreply@google.com> wrote:

Laurie Mukai - NOAA Federal has invited you to **contribute** to the following shared

(b)(5)



FOIA DOC-NOAA-2017-001345

Releaseable files too large for FO.

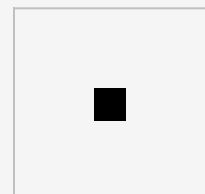
UR Final Full Release 6577 files

UR Full Release items 76 files

(b)(5)

Google Drive: Have all your files within reach from any device.

Google Inc. 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA



(b)(5)

(b)(5)

(b)(5)



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Ana Liza Malabanan - NOAA Federal

From: Ana Liza Malabanan - NOAA Federal
Sent: Friday, September 8, 2017 6:35 PM
To: Stacey Nathanson - NOAA Federal
Cc: Samuel Dixon - NOAA Affiliate; FOIA Office; Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Fwd: DOC-NOAA-2017-000226

(b)(5)

Have a great weekend!

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

From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Date: Fri, Sep 8, 2017 at 8:17 AM
Subject: Re: DOC-NOAA-2017-000226
To: Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>

Hi Stacey,

Just checking in.. (b)(5)

?

Thanks!

Ana Liza

On Wed, Aug 30, 2017 at 2:50 PM, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov> wrote:

Hi Ana Liza,

(b)(5)

I'll check in with you early next week. Thanks!

Stacey

Stacey Nathanson
Attorney-Advisor
NOAA Office of the General Counsel
Fisheries and Protected Resources Section

Phone: [301-713-9673](tel:301-713-9673)

Email: Stacey.Nathanson@noaa.gov

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On Wed, Aug 30, 2017 at 5:47 PM, Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov> wrote:

Hi Stacey,

(b)(5)
[Redacted]
[Redacted]
[Redacted]
[Redacted] I will Task to you in FOIAonline so that you can access the case. Thanks!

Mark (b)(5) [Redacted] Is there any additional information you need from us? Thanks!

Ana Liza

On Fri, Aug 11, 2017 at 4:22 PM, Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov> wrote:

Mark,

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

Stacey,

(b)(5)
[Redacted]
[Redacted]. I hope you are enjoying your time off!

Ana Liza

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

From: **Mark Graff - NOAA Federal** <mark.graff@noaa.gov>
Date: Tue, Aug 8, 2017 at 5:06 AM
Subject: DOC-NOAA-2017-000226
To: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Samuel Dixon - NOAA Affiliate

<samuel.dixon@noaa.gov>

Hi Ana Liza,

(b)(5)

We're getting pinged on a lot of these older requests to try to get resolution.

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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--

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



Torczon, Andrea (Federal)

From: Torczon, Andrea (Federal)
Sent: Monday, September 11, 2017 11:20 AM
To: Penaranda, Arlyn (Federal)
Cc: Graff, Mark (Federal)
Subject: FW: FOIA Appeal # DOC-OS-2017-001468

Arlyn,

We received another status inquiry from the requester. Please let me know your availability for a phone call.

Thank you.

Andrea

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From: Adam Carlesco [mailto:acarlesco@peer.org]
Sent: Monday, September 11, 2017 11:18 AM
To: Torczon, Andrea (Federal) <aTorczon@doc.gov>
Subject: RE: FOIA Appeal # DOC-OS-2017-001468

Andrea,

I wanted to follow up on this request. We are a month past when this was expected to be resolved, yet have not received a determination on this matter. Is a response forthcoming anytime in the near future? Thanks,

Adam

Adam Carlesco, Staff Counsel
Public Employees for Environmental Responsibility (PEER)
962 Wayne Ave., Suite 610
Silver Spring, Maryland 20910
Main Office: 202.265.PEER (7337) / Direct: 240.247.0298
Fax: 202.265.4192
acarlesco@peer.org
www.peer.org

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From: Torczon, Andrea (Federal) [<mailto:aTorczon@doc.gov>]
Sent: Wednesday, August 16, 2017 4:19 PM
To: Adam Carlesco <acarlesco@peer.org>
Subject: FW: FOIA Appeal # DOC-OS-2017-001468

Adam,

We are still reviewing this appeal. I will be out of the office until next Wednesday. I am sorry for the delay. I will contact you after I return.

Thank you.

Andrea

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From: Torczon, Andrea (Federal)
Sent: Wednesday, August 09, 2017 11:52 AM
To: 'Adam Carlesco' <acarlesco@peer.org>
Subject: RE: FOIA Appeal # DOC-OS-2017-001468

Adam,

I am hoping we can resolve this matter by next Wednesday. I will update you again as that day approaches.

Thank you.

Andrea

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From: Adam Carlesco [<mailto:acarlesco@peer.org>]
Sent: Wednesday, August 09, 2017 10:51 AM
To: Torczon, Andrea (Federal) <aTorczon@doc.gov>
Subject: RE: FOIA Appeal # DOC-OS-2017-001468

Thanks, appreciate the help!

Adam Carlesco, Staff Counsel
Public Employees for Environmental Responsibility (PEER)
962 Wayne Ave., Suite 610

Silver Spring, Maryland 20910
Main Office: 202.265.PEER (7337) / Direct: 240.247.0298
Fax: 202.265.4192
acarlesco@peer.org
www.peer.org

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From: Torczon, Andrea (Federal) [<mailto:aTorczon@doc.gov>]
Sent: Wednesday, August 9, 2017 10:51 AM
To: Adam Carlesco <acarlesco@peer.org>
Subject: RE: FOIA Appeal # DOC-OS-2017-001468

Adam,

We are making progress. I will see if I can get you a good estimate and get back to you later today or tomorrow.

Thank you.

Andrea

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From: Adam Carlesco [<mailto:acarlesco@peer.org>]
Sent: Wednesday, August 09, 2017 10:44 AM
To: Torczon, Andrea (Federal) <aTorczon@doc.gov>
Subject: RE: FOIA Appeal # DOC-OS-2017-001468

Hi Andrea,

FOIA Online is showing that this matter is still in the Evaluation stage despite having been due on August 1. When should we expect a response on this matter? Thanks,

Adam

Adam Carlesco, Staff Counsel
Public Employees for Environmental Responsibility (PEER)
962 Wayne Ave., Suite 610
Silver Spring, Maryland 20910
Main Office: 202.265.PEER (7337) / Direct: 240.247.0298
Fax: 202.265.4192
acarlesco@peer.org
www.peer.org

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From: Torczon, Andrea (Federal) [<mailto:aTorczon@doc.gov>]
Sent: Friday, July 28, 2017 10:02 AM
To: Adam Carlesco <acarlesco@peer.org>
Subject: FOIA Appeal # DOC-OS-2017-001468

Mr. Carlesco,

This is to let you know that I have been assigned to review your Freedom of Information Act (FOIA) appeal (Appeal # DOC-OS-2017-001468), which you submitted to the Department of Commerce on July 3, 2017, concerning your FOIA request to the National Oceanic and Atmospheric Administration (NOAA) (Request # DOC-NOAA-2017-000596).

Thank you.

Andrea

Andrea Torczon
Senior Attorney
Information Law Division
Office of the General Counsel
U.S. Department of Commerce
202-482-8028

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Arlyn Penaranda - NOAA Federal

From: Arlyn Penaranda - NOAA Federal
Sent: Monday, September 11, 2017 12:10 PM
To: Charles Green - NOAA Federal; Robert Hogan - NOAA Federal
Cc: Susan Beresford - NOAA Federal; Mark Graff - NOAA Federal
Subject: FW: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596
Attachments: FW: FOIA Appeal # DOC-OS-2017-001468; OLE Input_PEERFOIA_DOC-NOAA-2017-000596_RR.pdf

Chaz/Bob,

See draft response to DOC. Please edit as necessary. Document in question is attached.

R/

Arlyn

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Monday, September 11, 2017 11:47 AM
To: Robert Hogan - NOAA Federal <robert.j.hogan@noaa.gov>
Cc: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Subject: RE: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

DRAFT RESPONSE

Please edit or advise, thank you.

Andrea,

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

(b)(5)
[Redacted]

[Redacted]

[Redacted]

[Redacted]

I hope this helps.

R/

Arlyn

From: Arlyn Penaranda - NOAA Federal [<mailto:arlyn.penaranda@noaa.gov>]
Sent: Friday, September 08, 2017 7:14 AM
To: Robert Hogan - NOAA Federal <robert.j.hogan@noaa.gov>
Cc: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Subject: RE: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

Bob,

(b)(5)
[Redacted]

[Redacted] I greatly appreciate it.

Have a great weekend.

Arlyn

From: Robert Hogan - NOAA Federal [<mailto:robert.j.hogan@noaa.gov>]

Sent: Thursday, September 07, 2017 7:38 PM

To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>

Cc: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>; Logan Gregory - NOAA Federal <logan.gregory@noaa.gov>

Subject: Re: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

(b)(5)

NOAA General Counsel Enforcement Section

1315 East West Highway, Room 15861

Silver Spring, MD 20910

robert.j.hogan@noaa.gov

o 301-427-8283

On Thu, Sep 7, 2017 at 2:32 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Bob,

(b)(5)

I'm copying Arlyn who can give any additional background on her discussions with DOC/GC during the Admin Appeal.

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

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>

Date: Wed, Sep 6, 2017 at 12:24 PM

Subject: Re: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>

Cc: Charles Green - NOAA Federal <charles.green@noaa.gov>, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>, Logan Gregory - NOAA Federal <logan.gregory@noaa.gov>

Hi Arlyn--

If you would like, we can have a call sometime tomorrow and I can help draft a response. I'm free most of the afternoon, and you can send a calendar invitation for any open slot.

(b)(5)
[Redacted]
[Redacted]
[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](tel:3016285658) (O)
(b)(6) (C)

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On Wed, Sep 6, 2017 at 11:53 AM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Good mornin (b)(5) [Redacted]
[Redacted] ...Thanks!

Arlyn

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Thursday, August 31, 2017 11:09 AM
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>; Charles Green - NOAA Federal <charles.green@noaa.gov>
Cc: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>; Logan Gregory - NOAA Federal <logan.gregory@noaa.gov>
Subject: RE: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

Mark/Chaz,

(b)(5) [Redacted]
[Redacted]. I will confer to you and Chaz on next steps in this matter.

R/

Arlyn

From: Torczon, Andrea (Federal) [mailto:aTorczon@doc.gov]
Sent: Thursday, August 31, 2017 11:01 AM
To: Penaranda, Arlyn (Federal) <Arlyn.Penaranda@noaa.gov>

Cc: Graff, Mark (Federal) <Mark.Graff@noaa.gov>; Green, Charles (Federal) <Charles.Green@noaa.gov>;
Martin-Gross, Lorna (Federal) <Lorna.Martin-Gross@noaa.gov>

Subject: RE: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

Arlyn,

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

I am available today to discuss this matter.

Thank you.

Andrea

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From: Arlyn Penaranda - NOAA Federal [<mailto:arlyn.penaranda@noaa.gov>]
Sent: Thursday, August 31, 2017 9:50 AM
To: Torczon, Andrea (Federal) <aTorczon@doc.gov>
Cc: Graff, Mark (Federal) <Mark.Graff@noaa.gov>; Green, Charles (Federal) <Charles.Green@noaa.gov>;
Martin-Gross, Lorna (Federal) <Lorna.Martin-Gross@noaa.gov>
Subject: RE: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

Andrea,
I apologize for the delayed response.

(b)(5) [Redacted]

I hope this answer your inquiries. I'm in the office today but will be off tomorrow.

R/
Arlyn

From: Torczon, Andrea (Federal) [mailto:aTorczon@doc.gov]
Sent: Wednesday, August 30, 2017 2:50 PM
To: Penaranda, Arlyn (Federal) <Arlyn.Penaranda@noaa.gov>
Cc: Graff, Mark (Federal) <Mark.Graff@noaa.gov>; Green, Charles (Federal) <Charles.Green@noaa.gov>;
Martin-Gross, Lorna (Federal) <Lorna.Martin-Gross@noaa.gov>
Subject: FW: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

Arlyn,

I am following up to see if we can schedule a call.

Thank you!

Andrea

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From: Torczon, Andrea (Federal)
Sent: Monday, August 28, 2017 3:09 PM
To: 'Arlyn Penaranda - NOAA Federal' <arlyn.penaranda@noaa.gov>
Cc: Graff, Mark (Federal) <Mark.Graff@noaa.gov>; Green, Charles (Federal) <Charles.Green@noaa.gov>;
Martin-Gross, Lorna (Federal) <Lorna.Martin-Gross@noaa.gov>
Subject: RE: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

Arlyn,

I think we may need another phone call (b)(5)

I am available tomorrow morning or anytime on Wednesday.

Thank you.

Andrea

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From: Arlyn Penaranda - NOAA Federal [<mailto:arlyn.penaranda@noaa.gov>]
Sent: Monday, August 28, 2017 3:03 PM
To: Torczon, Andrea (Federal) <aTorczon@doc.gov>
Cc: Graff, Mark (Federal) <Mark.Graff@noaa.gov>; Green, Charles (Federal) <Charles.Green@noaa.gov>;
Martin-Gross, Lorna (Federal) <Lorna.Martin-Gross@noaa.gov>
Subject: RE: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

Andrea,

(b)(5)
[Redacted]

Arlyn

From: Torczon, Andrea (Federal) [<mailto:aTorczon@doc.gov>]
Sent: Monday, August 28, 2017 11:11 AM
To: Penaranda, Arlyn (Federal) <Arlyn.Penaranda@noaa.gov>
Subject: RE: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

Okay, thank you. Please let me know about my other questions. I am available for a phone call.

Andrea

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From: Arlyn Penaranda - NOAA Federal [<mailto:arlyn.penaranda@noaa.gov>]
Sent: Monday, August 28, 2017 11:08 AM
To: Torczon, Andrea (Federal) <aTorczon@doc.gov>
Subject: RE: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

Sorry for the late response. It fell off my radar as I was out sick last week.

(b)(5)
[Redacted]

(b)(5)

From: Torczon, Andrea (Federal) [mailto:aTorczon@doc.gov]
Sent: Monday, August 28, 2017 10:56 AM
To: Penaranda, Arlyn (Federal) <Arlyn.Penaranda@noaa.gov>
Subject: FW: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

Arlyn,

Please let me know if you would like to discuss my questions, and provide an estimate for NOAA's response to me.

Thank you!

Andrea

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From: Torczon, Andrea (Federal)
Sent: Wednesday, August 23, 2017 3:50 PM
To: 'Arlyn Penaranda - NOAA Federal' <arlyn.penaranda@noaa.gov>
Subject: RE: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

Arlyn,

Please provide further explanation.

(b)(5)

[Redacted content]

(b)(5)

Thank you.

Andrea

Andrea Torczon
Senior Attorney
Information Law Division
Office of the General Counsel
U.S. Department of Commerce
[202-482-8028](tel:202-482-8028)

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From: Arlyn Penaranda - NOAA Federal [<mailto:arlyn.penaranda@noaa.gov>]
Sent: Wednesday, August 23, 2017 2:31 PM
To: Torczon, Andrea (Federal) <aTorczon@doc.gov>; Martin-Gross, Lorna (Federal) <Lorna.Martin-Gross@noaa.gov>
Subject: RE: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

This has been reviewed by Mark and Charles Green (GC Enforcement Section Chief).

From: Torczon, Andrea (Federal) [<mailto:aTorczon@doc.gov>]
Sent: Wednesday, August 23, 2017 1:44 PM
To: Martin-Gross, Lorna (Federal) <Lorna.Martin-Gross@noaa.gov>
Cc: Penaranda, Arlyn (Federal) <Arlyn.Penaranda@noaa.gov>
Subject: RE: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

This is helpfu (b)(5)

(b)(5) I am available for another phone call.

Thank you!

Andrea

Andrea Torczon
Senior Attorney
Information Law Division
Office of the General Counsel
U.S. Department of Commerce
[202-482-8028](tel:202-482-8028)

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From: Lorna Martin-Gross - NOAA Federal [<mailto:lorna.martin-gross@noaa.gov>]
Sent: Thursday, August 17, 2017 11:57 AM
To: Torczon, Andrea (Federal) <aTorczon@doc.gov>
Cc: Penaranda, Arlyn (Federal) <Arlyn.Penaranda@noaa.gov>
Subject: Fwd: Response to DOC_FOIA appeal on DOC-NOAA-2017-000596

Hello Andrea,

I am sending this response on behalf of Arlyn; she had to leave before receiving Mark's review. The following is the justification requested for the subject FOIA appeal.

Andrea,

(b)(5)
[Redacted text block containing multiple paragraphs of blacked-out content]

Please let me know if you have further question.
Respectfully,
Arlyn Penaranda
FOIA Coordinator

Office of Law Enforcement

Regards,

Lorna

--

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: "Torczon, Andrea \ (Federal)" <aTorczon@doc.gov>
To: "Penaranda, Arlyn \ (Federal)" <Arlyn.Penaranda@noaa.gov>
Cc: "Graff, Mark \ (Federal)" <Mark.Graff@noaa.gov>
Subject: FW: FOIA Appeal # DOC-OS-2017-001468
Sent: Mon, 11 Sep 2017 11:20:11 -0400

Arlyn,

We received another status inquiry from the requester. Please let me know your availability for a phone call.

Thank you.

Andrea

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From: Adam Carlesco [mailto:acarlesco@peer.org]
Sent: Monday, September 11, 2017 11:18 AM
To: Torczon, Andrea (Federal) <aTorczon@doc.gov>
Subject: RE: FOIA Appeal # DOC-OS-2017-001468

Andrea,

I wanted to follow up on this request. We are a month past when this was expected to be resolved, yet have not received a determination on this matter. Is a response forthcoming anytime in the near future? Thanks,

Adam

Adam Carlesco, Staff Counsel
Public Employees for Environmental Responsibility (PEER)
962 Wayne Ave., Suite 610
Silver Spring, Maryland 20910
Main Office: 202.265.PEER (7337) / Direct: 240.247.0298
Fax: 202.265.4192
acarlesco@peer.org
www.peer.org

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From: Torczon, Andrea (Federal) [mailto:aTorczon@doc.gov]
Sent: Wednesday, August 16, 2017 4:19 PM
To: Adam Carlesco <acarlesco@peer.org>
Subject: FW: FOIA Appeal # DOC-OS-2017-001468

Adam,

We are still reviewing this appeal. I will be out of the office until next Wednesday. I am sorry for the delay. I will contact you after I return.

Thank you.

Andrea

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From: Torczon, Andrea (Federal)

Sent: Wednesday, August 09, 2017 11:52 AM

To: 'Adam Carlesco' <acarlesco@peer.org>

Subject: RE: FOIA Appeal # DOC-OS-2017-001468

Adam,

I am hoping we can resolve this matter by next Wednesday. I will update you again as that day approaches.

Thank you.

Andrea

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From: Adam Carlesco [<mailto:acarlesco@peer.org>]

Sent: Wednesday, August 09, 2017 10:51 AM

To: Torczon, Andrea (Federal) <aTorczon@doc.gov>

Subject: RE: FOIA Appeal # DOC-OS-2017-001468

Thanks, appreciate the help!

Adam Carlesco, Staff Counsel
Public Employees for Environmental Responsibility (PEER)
962 Wayne Ave., Suite 610
Silver Spring, Maryland 20910
Main Office: 202.265.PEER (7337) / Direct: 240.247.0298
Fax: 202.265.4192
acarlesco@peer.org
www.peer.org

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From: Torczon, Andrea (Federal) [<mailto:aTorczon@doc.gov>]

Sent: Wednesday, August 9, 2017 10:51 AM

To: Adam Carlesco <acarlesco@peer.org>

Subject: RE: FOIA Appeal # DOC-OS-2017-001468

Adam,

We are making progress. I will see if I can get you a good estimate and get back to you later today or tomorrow.

Thank you.

Andrea

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From: Adam Carlesco [<mailto:acarlesco@peer.org>]

Sent: Wednesday, August 09, 2017 10:44 AM

To: Torczon, Andrea (Federal) <aTorczon@doc.gov>

Subject: RE: FOIA Appeal # DOC-OS-2017-001468

Hi Andrea,

FOIA Online is showing that this matter is still in the Evaluation stage despite having been due on August 1. When should we expect a response on this matter? Thanks,

Adam

Adam Carlesco, Staff Counsel
Public Employees for Environmental Responsibility (PEER)
962 Wayne Ave., Suite 610
Silver Spring, Maryland 20910
Main Office: 202.265.PEER (7337) / Direct: 240.247.0298
Fax: 202.265.4192
acarlesco@peer.org
www.peer.org

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From: Torczon, Andrea (Federal) [<mailto:aTorczon@doc.gov>]

Sent: Friday, July 28, 2017 10:02 AM

To: Adam Carlesco <acarlesco@peer.org>

Subject: FOIA Appeal # DOC-OS-2017-001468

Mr. Carlesco,

This is to let you know that I have been assigned to review your Freedom of Information Act (FOIA) appeal (Appeal # DOC-OS-2017-001468), which you submitted to the Department of Commerce on July 3, 2017, concerning your FOIA request to the National Oceanic and Atmospheric Administration (NOAA) (Request # DOC-NOAA-2017-000596).

Thank you.

Andrea

Andrea Torczon
Senior Attorney
Information Law Division

Office of the General Counsel
U.S. Department of Commerce
202-482-8028

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Incident Number	Division	Date Reported	Status	Disposition/Outcome	Alleged Offense/Incident Reported
1600262	West Coast	1/20/2016	Closed	Verbal Warning	Harassment
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
1606224	Pacific Island	11/9/2016	Closed	Closed Lack of Evidence of actionable violation after consultation with NOAA General Counsel	Threaten/Verbal Harassment (Abusive comments made over the radio from another vessel)
I1601651	Northeast	3/18/2016	Closed	Closed Lack of Evidence of actionable violation	Harassment – (crew waking observer with excessive noise/lights while trying to sleep)
1601666	Northeast	3/30/2016	Closed	Closed Lack of Evidence of actionable violation	Harassment (initial phone conversations with vessel captain logged as “gruff” and reported to OLE as potential harassment by staff; observer stated no incidents on deployment and stated no harassment/problems occurred)
I1602316	Northeast	5/17/2016	Closed	Closed – no evidence of actionable violation based on interview of observer	Harassment – verbal comments and failure to provide reasonable assistance
(b)(7)(A)					
I1604003	Northeast	4/25/2016	Closed	Closed Lack of Evidence of actionable violation (observer no longer observing and not located for interview)	Harassment – verbally abusive comments noted in observer logbook
1604097	Northeast	8/6/2016	Closed	Closed Lack of Evidence of actionable violations after consultation with NOAA General Counsel	Harassment – verbal intimidation/profanity and tampering/theft of equipment (property later found)
(b)(7)(A)					
(b)(7)(A)					
1605714	Northeast	8/16/2016	Closed	Closed Lack of Evidence of actionable violation	Intimidation (verbal comment perceived as threatening prior to deployment – no incidents or problems on deployment)

1606742	Northeast	12/16/2016	Closed	OLE-Compliance Assistance Provided and education to vessel captain on observer assistance/sampling regulations	Harassment and Impeding/Interference (vessel crew failed to allow observer to sample bycatch on three occasions and used profanity on trip comment card)
1606750	Northeast	12/16/2016	Closed	Closed No Further Action Required (OLE contacted individual texting observer and situation was resolved)	Harassment (observer received multiple texts from vessel captain's spouse)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

1603161	Alaska	6/29/2016	CLOSED	OLE-education to involved crewmember on inappropriate comments to observers.	Harassment (verbal)
1603550	Alaska	8/31/2016	CLOSED	Written Warning Issued	Hostile Work Environment (Crewmember used profanity and hostile comments toward observer)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

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(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

1602562	Alaska	5/31/2016	CLOSED	Vessel captain fired crew member in response to incident reported by observer. Closed with no further OLE action	Sexual Harassment and Hostile Work Environment (crew member urinated in observer sampling area, verbal insults)
---------	--------	-----------	--------	--	---

(b)(7)(A)

From: Cybersecurity & Privacy Law360
Sent: Wednesday, September 13, 2017 4:37 AM
To: mark.graff@noaa.gov
Subject: White House Pushes To Make Surveillance Law Permanent



CYBERSECURITY & PRIVACY

What Do You Think About 3rd Party Litigation Funding?

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Wednesday, September 13, 2017



TOP NEWS

White House Pushes To Make Surveillance Law Permanent

U.S. Attorney General Jeff Sessions and Director of National Intelligence Dan Coats have urged Congress to permanently reauthorize a statute allowing for the surveillance of foreign targets outside the United States, saying it provides for the collection of information that is critical to the intelligence community, the U.S. Department of Justice said on Monday.

[Read more »](#)

Equifax Faces Bipartisan Wrath Over Data Breach

Lawmakers of both parties on Tuesday continued to hammer away at Equifax Inc. over the security breach that exposed the personal information of as many as 143 million consumers, blasting the company for putting consumers at risk and for its response to the hack. [Read more »](#)

Fla. Sheriff Sued Over Warrant Checks At Hurricane Shelters

A Florida sheriff who announced that his officers would be running arrest warrant checks on people seeking entry to shelters as Hurricane Irma was bearing down on the state now faces a lawsuit claiming that those searches were unconstitutional. [Read more »](#)

IRS Mishandled 1 In 7 FOIA Requests In 2016, Audit Shows

Disclosure specialists at the Internal Revenue Service improperly withheld information for one in seven Freedom of Information Act requests in fiscal year 2016, an audit by the Treasury Inspector General for Tax Administration found. [Read more »](#)

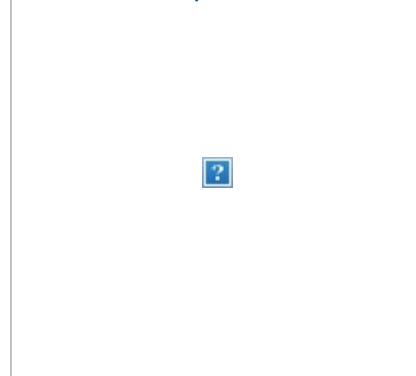
POLICY & REGULATION

House Passes Tweaks To DHS Information Sharing Rules

The House of Representatives passed a package of bills Tuesday that would pull out kinks in how the Department of Homeland Security handles information internally and shares it outside of the agency. [Read more »](#)

DOT Unveils Voluntary Guidance For Self-Driving Cars Rollout

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LAW FIRMS

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Doffermyre Shields
Eggnatz Lopatin
GrayRobinson
Jenner & Block
Jones Day
King & Spalding
Lawyers' Committee for Civil Rights
Morgan & Morgan

The U.S. Department of Transportation on Tuesday unveiled a new federal policy that eases the process for manufacturing, testing and deploying self-driving or autonomous cars in the U.S., establishing guidelines prioritizing safety and discouraging states from drafting potentially conflicting self-driving car rules of their own. [Read more »](#)

LITIGATION

JPML Won't Rush On Requests To Send Equifax Suits To Ga.

The U.S. Judicial Panel on Multidistrict Litigation declined Tuesday to expedite its consideration of efforts to consolidate in Georgia federal court the over 30 proposed class actions that have been filed against Equifax in the days since it disclosed a cyberattack that potentially impacted 143 million consumers' personal information. [Read more »](#)

Waffle House Serves Up Plan To Combine Job-Screening Suits

Waffle House Inc. and a paid search website for public record information told a Florida federal judge on Monday that two proposed class suits filed by job applicants over the restaurant chain's allegedly secretive background checks should be consolidated, but they disagreed with the applicants over which action should take the lead. [Read more »](#)

EXPERT ANALYSIS

Takeaways From FTC's Settlement With Lenovo

The Federal Trade Commission's recent settlement with Lenovo over allegedly preloaded adware on its laptops reinforces a growing trend of courts and regulatory authorities imputing liability to companies for the acts and omissions of its third-party vendors, say Tracy Lechner and Esteban Morin of Brownstein Hyatt Farber Schreck LLP. [Read more »](#)

Ransomware Issues Too Often Lost In The Shuffle: Part 2

Notification responsibilities relating to a ransomware attack can become complicated and may not precisely align with other cybersecurity-related notification obligations and triggers, says John Reed Stark, president of John Reed Stark Consulting LLC. [Read more »](#)

LEGAL INDUSTRY

Analysis

The 'Very Ugly' Pro Se Case That Put Posner Over The Edge

When the Seventh Circuit in January refused to revive the lawsuit of a prisoner who was seriously injured after officials allegedly failed to accommodate his medical condition, then-Judge Richard Posner wasn't happy, writing in a blunt dissent that "a dog would have deserved better treatment." [Read more »](#)

Davis Polk Atty Headed To State Dept. Discloses \$4.2M Income

A Davis Polk & Wardwell LLP partner President Donald Trump nominated earlier this month to serve as legal adviser at the State Department took home a nearly \$1.5 million partnership share and \$2.7 million salary from the firm since January 2016, according to a financial disclosure report obtained by Law360 on Tuesday. [Read more »](#)

Pro Bono Spotlight

Cleary Helps Overhaul Discriminatory NC Voting System

Jones County, North Carolina, hasn't had an African-American commissioner since a 1994 general election, but thanks to pro bono work by Cleary Gottlieb Steen & Hamilton LLP and the Lawyers' Committee for Civil Rights Under Law, an upcoming 2018 election might stop that trend in

Patterson Harkavy
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COMPANIES

Alliance of Automobile
Manufacturers
American Civil Liberties Union
Arby's Restaurant Group Inc.
AstraZeneca
Comcast Corporation
Competitive Enterprise Institute
Electronic Frontier Foundation
Equifax Inc.
Evonik Industries AG
Experian
Financial Industry Regulatory
Authority Inc.
Fortress Investment Group LLC
HSBC Holdings PLC
Home Depot, Inc.
International Business Machines
Corporation
J.M. Huber Corp.
Lawyers' Committee for Civil
Rights Under Law
Lenovo Group Ltd.
National Association of Attorneys
General
New York Times Co.
Target Corporation
TransUnion LLC
Unilever Plc
Waffle House Inc.
Wyndham Worldwide Corporation
Yum! Brands Inc.

GOVERNMENT AGENCIES

European Union
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Commission
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Internal Revenue Service
National Credit Union
Administration
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Global 20: Baker McKenzie

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Arlyn Penaranda - NOAA Federal

From: Arlyn Penaranda - NOAA Federal
Sent: Wednesday, September 13, 2017 12:38 PM
To: Torczon, Andrea (Federal)
Cc: Mark Graff - NOAA Federal; Lorna Martin-Gross - NOAA Federal
Subject: RE: FOIA appeal request # DOC-NOAA-2017-000596
Attachments: Fwd: FOIA Request from PEER - DOC-NOAA-2017-000596

Andrea,

RE: Full Disclosure of DOC/OSY document

(b)(5)

See

attached.

R/

Arlyn

From: Torczon, Andrea (Federal) [mailto:aTorczon@doc.gov]
Sent: Wednesday, September 13, 2017 12:24 PM
To: Penaranda, Arlyn (Federal) <Arlyn.Penaranda@noaa.gov>
Cc: Graff, Mark (Federal) <Mark.Graff@noaa.gov>; Green, Charles (Federal) <Charles.Green@noaa.gov>; Hogan, Robert (Federal) <Robert.J.Hogan@noaa.gov>; Martin-Gross, Lorna (Federal) <Lorna.Martin-Gross@noaa.gov>; Gregory, Logan (Federal) <Logan.Gregory@noaa.gov>
Subject: FOIA appeal request # DOC-NOAA-2017-000596

Arlyn,

I reviewed NOAA's response to my questions. Please see each bullet point below. I discussed this matter with Charles Green.

(b)(5)

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

(b)(5) [Redacted]

[Redacted]

- [Redacted]
[Redacted]
[Redacted]

[Redacted]

- [Redacted]
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[Redacted]

- [Redacted]
[Redacted]
- [Redacted]
[Redacted]
[Redacted]
- [Redacted]
[Redacted]
[Redacted]
[Redacted]

Thank you.

Andrea

Andrea Torczon
Senior Attorney
Information Law Division

Office of the General Counsel
U.S. Department of Commerce
202-482-8028

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From: Arlyn Penaranda - NOAA Federal [<mailto:arlyn.penaranda@noaa.gov>]
Sent: Tuesday, September 12, 2017 8:25 AM
To: Torczon, Andrea (Federal) <aTorczon@doc.gov>
Cc: Graff, Mark (Federal) <Mark.Graff@noaa.gov>; Green, Charles (Federal) <Charles.Green@noaa.gov>; Hogan, Robert (Federal) <Robert.J.Hogan@noaa.gov>; Martin-Gross, Lorna (Federal) <Lorna.Martin-Gross@noaa.gov>; Gregory, Logan (Federal) <Logan.Gregory@noaa.gov>
Subject: RE: FOIA appeal

Andrea,
Good morning.

(b)(5)
[Redacted text]

Incident Number	Division	Date Reported	Status	Disposition/Outcome	Alleged Offense/Incident Reported
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[Redacted table content]

Incident Number	Division	Date Reported	Status	Disposition/Outcome	Alleged Offense/Incident Reported
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[Redacted table content]

(b)(5)

R/

Arlyn

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Monday, September 11, 2017 12:08 PM
To: Torczon, Andrea (Federal) <aTorczon@doc.gov>
Cc: Mark Graff - NOAA Federal <mark.graff@noaa.gov>; Charles Green - NOAA Federal <charles.green@noaa.gov>; Robert Hogan - NOAA Federal <robert.j.hogan@noaa.gov>
Subject: Re: FOIA appeal

Andrea,

We understand concerns and have discussed this matter. Mark is out of the office but will be online tomorrow morning. I expect a response from sooner than the 18th.

Arlyn

On Mon, Sep 11, 2017 at 11:53 AM, Torczon, Andrea (Federal) <aTorczon@doc.gov> wrote:

Arlyn,

(b)(5)

(b)(5) [REDACTED]?

Thank you.

Andrea

[202-482-8028](tel:202-482-8028)

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Arlyn Penaranda
Records Management Specialist
Office of Law Enforcement
NOAA, National Marine Fisheries Service
Office: 301-427-8256
arlyn.penaranda@noaa.gov <arlyn.penaranda@noaa.gov>

From: "Lola Stith - NOAA Affiliate" <lola.m.stith@noaa.gov>
To: "Arlyn Penaranda - NOAA Federal" <arlyn.penaranda@noaa.gov>
Subject: Fwd: FOIA Request from PEER - DOC-NOAA-2017-000596
Sent: Thu, 23 Feb 2017 13:19:52 -0400
[DOC-2017-000544 - Laura Dumais PEER - NOAA.pdf](#)
[DOC-OS-2017-000544 - Laura Dumais PEER - Log-OSY.xlsx](#)

Hi Sunshine (b)(5)

. I'm passing it on to you. See attachments.

Lola

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

From: **Mark Graff - NOAA Federal** <mark.graff@noaa.gov>
Date: Tue, Feb 21, 2017 at 3:59 PM
Subject: Fwd: FOIA Request from PEER
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Cc: Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>

Hey Lola--

This is a referral from DOC/OSY. (b)(5)

Please let me know if you need anything on this one. Thank you!!

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

From: **McPhail, Katherine (Federal)** <KMcPhail@doc.gov>
Date: Tue, Feb 21, 2017 at 3:54 PM
Subject: RE: FOIA Request from PEER
To: "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>

Mark,

Please find attached the OSY responses. Let me know if you have any questions/concerns.

Thanks,

Kate

Kate McPhail

Program Analyst

U.S. Department of Commerce, Office of Security
Desk: [\(202\) 482-0106](tel:2024820106)

Email: kmcphail@doc.gov

[Security is Everyone's Responsibility](#)

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Tuesday, February 21, 2017 11:35 AM
To: McPhail, Katherine (Federal) <KMcPhail@doc.gov>
Subject: Re: FOIA Request from PEER

(b)(5) [REDACTED]
[REDACTED]. Feel free to send over to our shop whenever your side of the processing is done.

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)

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On Tue, Feb 21, 2017 at 11:29 AM, McPhail, Katherine (Federal) <KMcPhail@doc.gov> wrote:

Hi Mark,

Thanks (b)(5) [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED].

Let me know if you are thinking otherwise.

Thanks,

Kate

Kate McPhail

Program Analyst

Plans, Programs & Compliance Division

U.S. Department of Commerce, Office of Security

Desk: [\(202\) 482-0106](tel:2024820106)

Email: kmcphail@doc.gov

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From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]

Sent: Tuesday, February 21, 2017 11:12 AM

To: McPhail, Katherine (Federal) <KMcPhail@doc.gov>

Subject: Re: FOIA Request from PEER

Hi Kate--

(b)(5) [REDACTED]
[REDACTED]
[REDACTED] I'll let you know when he responds. I know he's in the office today.

(b)(5) [REDACTED]
[REDACTED]
[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)

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On Tue, Feb 21, 2017 at 11:02 AM, McPhail, Katherine (Federal) <KMcPhail@doc.gov> wrote:

Mark,

I hope this email finds you well (b)(5)

Thanks,

Kate

Kate McPhail

Program Analyst

Plans, Programs & Compliance Division

U.S. Department of Commerce, Office of Security

Desk: [\(202\) 482-0106](tel:202-482-0106)

Email: kmcphail@doc.gov

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From: McPhail, Katherine (Federal)
Sent: Monday, February 13, 2017 11:20 AM
To: Graff, Mark (Federal) <Mark.Graff@noaa.gov>
Subject: Re: FOIA Request from PEER

Mark,

I hope you had a nice weekend. We seem yo be playing phone tag! Can you please let me know if you are working today?

I will be on leave the rest of the week and would love to touch base before I leave.

Thanks,
Kate
[202-482-0106](tel:202-482-0106)

From: McPhail, Katherine (Federal)
Sent: Tuesday, February 7, 2017 3:22:25 PM
To: Graff, Mark (Federal)
Subject: FOIA Request from PEER

Mark,

I hope this email finds you well. I am the FOIA Officer for the Office of Security and we have received a FOIA request regarding NOAA. When you get a chance can you call me at the number below to discuss?

Thanks,

Kate

Kate McPhail

Program Analyst

Plans, Programs & Compliance Division

U.S. Department of Commerce, Office of Security

Desk: [\(202\) 482-0106](tel:2024820106)

Email: kmcphail@doc.gov

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--

[Lola Stith](#)
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c) **(b)(6)**
lola.m.stith@noaa.gov



MEMORANDUM FOR Mark Graff
NOAA FOIA Officer

FROM: Kate McPhail
Management Analyst
Office of Security

SUBJECT: Response to DOC-OS 2017-000544
(Laura Dumais – PEER)
Freedom of Information Act (FOIA) Request

FOIA Request number DOC-OS 2017-000544 from Laura Dumais – (b)(5)

[Redacted]

[Redacted]

If you have any questions, please don't hesitate to contact me at 202-482-0601 or kmcp hail@doc.gov.

Attachments

(b) (5)

Incident Number	Division	Date Reported	Status	Disposition/Outcome	Alleged Offense/Incident Reported
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Incident Number	Division	Date Reported	Status	Disposition/Outcome	Alleged Offense/Incident Reported
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Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, September 14, 2017 8:45 AM
To: Dennis Morgan - NOAA Federal; Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate; Robert Hogan
Subject: Draft Monthly FOIA Report
Attachments: Amended Complaint.pdf; Original Request.pdf; FOIA Monthly Status Report 08-31-2017.pdf; FOIA Monthly Status Report 08-31-2017.xlsx

Hey Guys,

Any suggestions or edits to this?

Good Afternoon,

The August 2017 Monthly FOIA Report is attached.

Several highlights from the report include:

- The backlog dipped last month, dropping by 11% to 76 backlogged requests. What is more significant, is that the backlog dropped despite an open request tally of 157 at the end of July--the largest open request tally since August of 2015. This drop in the backlog last month is due to the tremendous closure efforts of the staff and line offices, closing 60 requests in a single month. That is the highest monthly closure rate since September 2015, when NOAA first cleared its FOIA backlog down to the current steady-state level. This shows the resourcefulness and commitment of the FOIA professionals in the Staff and Line Offices.
- The open request tally remains elevated, at 131 requests, and so in order to avoid an increase in the backlog, closures will need to stay high. This last month will establish the snapshot-in-time Fiscal Year metrics reported to DOC, which in turn are reported to DOJ, and finally to Congress. NMFS in particular has made a large push towards backlog closures, and is closing requests at a rate nearly 4 times the next highest Office closure rate. This is the time to lean forward, finishing strong, and reaffirming NOAA's commitment to transparency.

In litigation, NOAA was sued by the Center for Biological Diversity, who had submitted a FOIA request seeking directives to stop using words regarding climate change, and to remove similar information from NOAA websites. NOAA had replied with a "no records" response, and that response was affirmed on administrative appeal to DOC. DOC and NOAA were not parties until the amended complaint was filed. An answer to the original complaint was filed before DOC and NOAA became parties. An answer to the amended complaint is due September 28. The original request, (DOC-NOAA-2017-001066) as well as a copy of the Amended Complaint, are attached.

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

CENTER FOR BIOLOGICAL DIVERSITY
378 North Main Avenue
Tucson, AZ 85701,

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR
1849 C Street, NW
Washington, D.C. 20240,

U.S. ENVIRONMENTAL PROTECTION
AGENCY
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460,

U.S. DEPARTMENT OF ENERGY
1000 Independence Avenue, SW
Washington, D.C. 20585,

U.S. DEPARTMENT OF STATE
2201 C. Street, NW
Washington, D.C. 20037,

U.S. DEPARTMENT OF COMMERCE
1401 Constitution Avenue, NW
Washington, D.C. 20230,

and

U.S. NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
1315 East-West Highway
Silver Spring, MD 20910

Defendants.

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Case No.: 1:17-cv-0974 (KBJ)

INTRODUCTION

1. The Center for Biological Diversity (“Center”)—an environmental conservation organization that works to protect native wildlife species and their habitats—challenges the failure of the U.S. Department of Interior, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of State, U.S. Department of Commerce, and U.S. National Oceanic and Atmospheric Administration to provide records concerning the Trump administration’s censorship of these federal departments’ and their component agencies’ discussion or dissemination of information about climate change, in violation of the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA” or “Act”), or alternatively, the Administrative Procedure Act, 5 U.S.C. §§ 701-06 (“APA”).

2. From January through March 2017, news outlets reported that the Trump administration directed numerous federal departments and agencies to remove information from their websites about climate change and/or to cease use of phrases such as “climate change,” “emissions reduction,” or “Paris agreement” in agency documents. These departments and agencies include the six named defendants in this action.

3. To understand these actions, the Center filed FOIA requests with each of the defendants, seeking directives or communications barring or removing climate change-related words or phrases from formal communications as well as the information, such as webpages about climate change, that has been removed from public view.

4. However, although each defendant acknowledged the Center’s request, none have provided any responsive records or stated when they might do so.

5. Defendants are unlawfully withholding the records by failing to search for and provide all responsive records to the Center. The defendants’ failure to comply with FOIA by

releasing all records related to the censorship of climate change-related words and phrases is contrary to FOIA and undermines FOIA's policy of government transparency.

6. Because prompt access to these records is necessary to effectuate FOIA's purpose, the Center seeks declaratory relief establishing that defendants are in violation of FOIA, or alternatively, the APA. The Center also seeks injunctive relief directing defendants to provide responsive records without any further delay.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

8. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district, because a portion of the responsive records may be found in this district.

9. Declaratory relief is appropriate under 28 U.S.C. § 2201.

10. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit conservation organization with offices throughout the United States. The Center has more than 58,000 members. The Center and its members are harmed by EPA's violations of FOIA, or alternatively the APA, as such violations preclude the Center from gaining a full understanding of the circumstances, rationales, and individuals involved in the Trump administration's censorship of climate change-related information.

12. Defendant U.S. DEPARTMENT OF THE INTERIOR (“Interior Department”) is an independent agency of the executive branch of the U.S. government. The Interior Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13. Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY (“EPA”) is an independent agency of the executive branch of the U.S. government. EPA is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

14. Defendant U.S. DEPARTMENT OF ENERGY (“Energy Department”) is an independent agency of the executive branch of the U.S. government. The Energy Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

15. Defendant U.S. DEPARTMENT OF STATE (“State Department”) is an independent agency of the executive branch of the U.S. government. The State Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

16. Defendant U.S. DEPARTMENT OF COMMERCE (“Commerce Department”) is an independent agency of the executive branch of the U.S. government. The Commerce Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

17. Defendant U.S. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (“NOAA”) is an independent agency of the executive branch of the U.S.

government. NOAA is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

STATUTORY BACKGROUND

18. FOIA's basic purpose is government transparency. It establishes the public's right to access all federal agency records unless such records may be withheld pursuant to one of nine, narrowly construed FOIA exemptions. 5 U.S.C. § 552(b)(1)-(9).

19. FOIA imposes strict and rigorous deadlines on federal agencies when they receive a request for records pursuant to FOIA. Specifically, an agency must determine whether to disclose responsive records and notify the requester of its determination within 20 working days of receiving a FOIA request, and it must make records "promptly" available unless it can establish that certain unusual circumstances are present and/or that it may lawfully withhold records, or portions thereof, from disclosure. *Id.* § 552(a)(3)(A), (a)(6). Also within 20 working days, the agency must inform the requester that it has a right to appeal the agency's determination. *Id.* § 552(a)(6)(A)(i).

20. FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

21. Congress has specified limited circumstances in which federal agencies may obtain more time to make the determination that is required by 5 U.S.C. § 552(a)(6)(A)(i).

22. First, an agency may toll the 20-working-day deadline to seek additional information or clarification from a requester, but that tolling period ends when the agency receives such information or clarification. *Id.* § 552(a)(6)(A)(ii).

23. Second, an agency may extend the 20-working-day deadline for an additional 10 working days by giving a written notice to the requester that sets forth "unusual circumstances"

to justify a deadline extension which also requires that it provide the date by which the agency expects to make the determination. *Id.* § 552(a)(6)(B)(i). However, to invoke such “unusual circumstances,” the agency must provide the requester with “an opportunity to limit the scope of the request so that it may be processed within [20 working days] or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii). In addition, when asserting unusual circumstances, the agency “shall make available its FOIA Public Liaison” to “assist in the resolution of any disputes between the requester and the agency.” *Id.*

24. FOIA requires each agency to make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records that are responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D).

25. FOIA requires federal agencies to expeditiously disclose requested records, *see id.* § 552, and mandates a policy of broad disclosure of government records. Any inquiry under FOIA brings with it a strong presumption in favor of disclosure.

26. Congress recognized that in certain, limited instances, records may be withheld as exempt from FOIA’s broad disclosure mandate, and thus created nine categories of exemptions. *Id.* § 552(b). These exemptions, however, are narrowly construed in light of FOIA’s dominant objective of disclosure, not secrecy.

27. The U.S. district courts have jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

28. Alternatively, an agency’s response to a FOIA request and/or a FOIA appeal is subject to judicial review under the APA, which confers a right of judicial review on any person

who is adversely affected by agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is unlawfully withheld or unreasonably delayed. *Id.* § 706(1). District courts must set aside any agency action that is found to be “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” *Id.* § 706(2)(A).

FACTUAL BACKGROUND

Interior Department FOIA Request (OS-2017-00384)

29. On March 30, 2017, the Center submitted a FOIA request to the Interior Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

30. The same day, the Interior Department acknowledged the Center’s request and assigned it tracking number OS-2017-00384 (“Interior Department FOIA Request”).

31. A determination on the Center’s FOIA request to the Interior Department was due by April 27, 2017, which is 20 working days after the date of the Interior Department’s acknowledgement of the request.

32. As of the date of the filing of this amended complaint, which is 77 working days past the 20-working-day deadline, the Interior Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center’s FOIA request.

EPA FOIA Request (EPA-HQ-2017-005517)

33. On March 30, 2017, the Center submitted a FOIA request to the EPA, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

34. The same day, the EPA acknowledged the Center’s request and assigned it tracking number EPA-HQ-2017-005517 (“EPA FOIA Request”). On March 12, 2017, EPA granted a waiver of fees in connection with the request.

35. A determination on the Center’s FOIA request to the EPA was due by April 27, 2017, which is 20 working days after the date of the EPA’s acknowledgement of the request.

36. After receiving no further communications from EPA regarding this request, by letter dated May 8, 2017, the Center informed EPA that its determination was overdue and offered to assist EPA in making a determination on the Center’s EPA FOIA Request. The Center also requested an estimate for when EPA would make a determination on the Center’s FOIA request.

37. As of the date of the filing of this amended complaint, which is 77 working days past the 20-working-day deadline, EPA has not responded to the Center’s May 8, 2017 letter, requested additional time to respond to the Center’s FOIA request, provided any responsive records, made a determination, or provided an estimated date of completion of the Center’s FOIA request.

Energy Department FOIA Request (HQ-2017-00806)

38. On March 30, 2017, the Center submitted a FOIA request to the Energy Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

39. The next day, on March 31, 2017, the Energy Department acknowledged the Center’s request and assigned it tracking number HQ-2017-00806 (“Energy Department FOIA Request”).

40. On April 11, 2017, a representative of the Energy Department, Ms. Natalie Anderson, contacted Ms. Margaret E. Townsend of the Center for Biological Diversity by phone and email. Ms. Anderson stated that she wanted to clarify the timeframe for records that are responsive to the Center’s Energy Department FOIA Request. In response, Ms. Townsend informed Ms. Anderson that the Energy Department could search for and provide all responsive records that were generated on or after November 9, 2016.

41. Ms. Anderson also stated that the Energy Department had received many FOIA requests that are similar to the Center’s Energy Department FOIA Request, and in an email dated April 11, 2017, suggested that if the Center would agree to limit the department’s search to two of its program offices—specifically, the Office of International Affairs (“OIA”) and the Office of Energy Policy and Systems Analysis (“EPSA”)—this “should allow [the Energy Department] to

provide a response more quickly.” Accordingly, the Center agreed to limit the department’s search to the OIA and EPSA.

42. Also in her April 11, 2017 email, Ms. Anderson asked if the Center would agree to eliminate the phrases “including but not limited to” and “any related words or phrases” from its request, and if the Center would like to include any search terms in addition to “climate change,” “global warming,” “climate disruption,” “greenhouse gas emissions,” “emissions reductions,” and/or “Paris agreement.” In response, Ms. Townsend added the terms “climate” and “fossil fuels” to the search terms to be used by the Energy Department during its search for responsive records from the OIA and EPSA.

43. By email dated April 13, 2017, Ms. Anderson confirmed the scope of the department’s search for responsive records, stating that the department would “move forward with processing.”

44. By letter dated April 26, 2017, Energy Department FOIA Officer Alexander C. Morris confirmed the agreement of Ms. Anderson and Ms. Townsend regarding the scope of the department’s search, informed the Center that the request was assigned to OIA and EPSA, and granting the Center’s request for a waiver of fees.

45. A determination on the Center’s Energy Department FOIA Request was due on May 11, 2017, which is 20 working days after the date of Ms. Anderson’s email stating that the department was prepared to “move forward with processing.”

46. By letter dated August 11, 2017, which was 65 working days past the 20-working-day deadline, the Energy Department provided a determination in response to the Center’s FOIA request.

47. In its determination, the Energy Department stated that it possessed no responsive records.

48. News articles indicate that the Energy Department likely possesses responsive records. For example, in an article dated March 29, 2017, *Politico* reported that “[a] supervisor at the Energy Department’s international climate office told staff this week not to use the phrases ‘climate change,’ ‘emissions reduction’ or ‘Paris Agreement’ in written memos, briefings or other written communication” See Eric Wolff, Energy Department climate office bans use of phrase “climate change”, *Politico* (Mar. 29, 2017), <http://www.politico.com/story/2017/03/energy-department-climate-change-phrases-banned-236655>.

49. The Center challenges the adequacy of the Energy Department’s search for responsive records and the Energy Department’s failure to provide all responsive records to the Center.

State Department FOIA Request

50. On April 3, 2017, the Center submitted a FOIA request to the State Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

51. The next day, on April 4, 2017, the State Department acknowledged the Center’s request and assigned it tracking number F-2017-08517 (“State Department FOIA Request”).

52. By form letter dated April 10, 2017, the Requester Communications Branch of the State Department's Office of Information Programs & Services re-acknowledged receipt of the Center's FOIA request, and it also granted a public interest waiver of fees that are incurred in processing the request.

53. After receiving no further communications from the State Department regarding this request, by letter dated May 31, 2017, the Center informed the State Department that its determination was overdue and offered to assist the State Department in making a determination on the Center's State Department FOIA Request. The Center also requested an estimate for when the State Department would make a determination on the Center's FOIA request.

54. By email dated June 1, 2017, Charlotte W. Duckett confirmed the State Department's receipt of the Center's May 31, 2017 communication. Ms. Duckett stated that a copy of the Center's May 31, 2017 communication "was forwarded to the office that is processing your request" and that "our office has requested an estimated completion date for your request." Ms. Duckett did not provide an estimated date of completion of the State Department's determination on the Center's request.

55. A determination on the Center's FOIA request to the State Department was due by May 2, 2017, which is 20 working days after the date of the State Department's acknowledgement of the request.

56. As of the date of the filing of this amended complaint, which is 74 working days past the 20-working-day deadline, the State Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center's FOIA request.

Commerce Department FOIA Request (DOC-OS-2017-000939)

57. On April 3, 2017, the Center submitted a FOIA request to the Commerce Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

58. The same day, the Commerce Department acknowledged the Center’s request and assigned it tracking number DOC-OS-2017-000939 (“Commerce Department FOIA Request”). On April 10, 2017, the Commerce Department granted a waiver of fees in connection with the request.

59. On April 13, 2017, the Commerce Department sent a letter to the Center requesting clarification of (1) the time frame of the records request and (2) the type of records requested.

60. The Center provided the requested clarification to the Commerce Department via electronic mail on April 17, 2017. The Center informed the Commerce Department that “[t]he timeframe of the records request is November 9, 2016 to the date of the search,” and that

[t]he type of records requested is all records, as defined by FOIA, and included in the following paragraph from our request:

For purposes of this request, “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind including electronic as well as paper documents, e-mails, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, data bases, drawings, surveys, graphs, charts,

photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

61. On May 23, 2017, Commerce Department FOIA Specialist Ms. Ayana Crawford called Ms. Townsend to ask if the Center would respond to the agency's request for clarification before Ms. Crawford took action to close the request. Ms. Townsend informed Ms. Crawford that the Center had already provided the requested clarification on April 17, 2017. Ms. Crawford asked Ms. Townsend to resend it. Ms. Townsend resent the email clarification the same day.

62. A determination on the Center's Commerce Department FOIA Request was due on May 3, 2017, which is 20 working days after the Commerce Department received the Center's FOIA request.

63. Even if the Commerce Department had reasonably suspended its timeline for a determination on the Center's FOIA request, by relying on May 23, 2017 as the date that the Center provided clarification, then the Center's Commerce Department FOIA Request would have been due on June 9, 2017.

64. As of the date of the filing of this Amended complaint, which is 47 workdays past the June 9, 2017 deadline, the Commerce Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center's Commerce Department FOIA request.

NOAA FOIA Request (DOC-NOAA-2017-001066)

65. On April 21, 2017, the Center submitted a FOIA request to NOAA, requesting "all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-

related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

66. The same day, NOAA acknowledged the Center’s request and assigned it tracking number DOC-NOAA-2017-001066 (“NOAA FOIA Request”). On April 24, 2014, NOAA provided a formal acknowledgement letter to the Center.

67. On May 3, 2017, NOAA informed the Center that it determined that a waiver of fees in connection with the request was not applicable as the request was “not billable.”

68. On May 10, 2017, NOAA provided a final “no records” determination to the Center and informed the Center of its right to appeal the determination.

69. The Center appealed NOAA’s “no records” determination on June 30, 2017. The same day, NOAA acknowledged the Center’s appeal and assigned it tracking number DOC-OS-2017-001456 (“NOAA FOIA Appeal”)

70. NOAA affirmed its decision on the Center’s NOAA FOIA Appeal on July 3, 2017. In the letter, the agency informed the Center that “[r]ecords indicate that a search was tasked to the NOAA National Environmental Satellite Data and Information Services (NESDIS) and that a search of the NESDIS correspondence unit was performed.” NOAA stated that “it is reasonable to assume that the NESDIS correspondence unit would hold any and all documents responsive to [the Center’s] request.” NOAA also informed the Center that it has “the right to obtain judicial review as provided for in 5 U.S.C. § 552(a)(4)(8).”

71. News articles indicate that NOAA possesses responsive records. For example, in an article date July 13, 2017, the *New York Times* reported that phrasing in a NOAA news release accompanying a report about the warming ability of global emissions of greenhouse

gases omitted any link of “human activity” to emissions. *See* Lisa Friedman, Climate-Altering Gases Spiked in 2016, Federal Scientists Report, NY Times (July 13, 2017), <https://www.nytimes.com/2017/07/13/climate/greenhouse-gases-spike-noaa-global-warming.html>.

72. The Center challenges the adequacy of NOAA’s search for responsive records and NOAA’s failure to provide all responsive records to the Center.

All Requests

73. None of FOIA’s nine exemptions to the statute’s disclosure mandate apply to the records that are responsive to any of the Center’s FOIA requests. *Id.* § 552(b).

74. The Center has been required to expend resources to prosecute this action.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **VIOLATION OF THE FREEDOM OF INFORMATION ACT** **Failure to Comply with FOIA’s Mandatory Determination Deadline**

COUNT ONE: The Interior Department Missed FOIA’s Mandatory Determination Deadline for the Center’s Interior Department FOIA Request Number OS-2017-00384

75. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

76. The Interior Department has violated FOIA by refusing to disclose records that are responsive to the Center’s Interior Department FOIA Request Number OS-2017-00384.

77. The Center has a statutory right to a final determination from the Interior Department on FOIA Request Number OS-2017-00384 in a manner that complies with FOIA. The Interior Department has violated the Center’s rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

78. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

79. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's disclosure provisions as it has in this case.

80. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, the Interior Department will continue to violate Plaintiff's rights to receive public records under FOIA.

COUNT TWO: EPA Missed FOIA's Mandatory Determination Deadline for the Center's EPA FOIA Request Number EPA-HQ-2017-005517

81. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

82. EPA has violated FOIA by refusing to disclose records that are responsive to the Center's EPA FOIA Request Number EPA-HQ-2017-005517.

83. The Center has a statutory right to a final determination from EPA on its EPA FOIA Request Number EPA-HQ-2017-005517 in a manner that complies with FOIA. EPA has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

84. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's decision deadlines as it has in this case.

85. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Missed FOIA's Mandatory Determination Deadline for the Center's Energy Department FOIA Request Number EPA-HQ-2017-005517

86. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

87. The Energy Department has violated FOIA by refusing to disclose records that are responsive to the Center's Energy Department FOIA Request Number HQ-2017-00806.

88. The Center has a statutory right to a final determination from the Energy Department on its Energy Department FOIA Request Number HQ-2017-00806 in a manner that complies with FOIA. The Energy Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

89. The Center's organizational activities will be adversely affected if the Energy Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

90. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Missed FOIA's Mandatory Determination Deadline for the Center's State Department FOIA Request Number F-2017-08517

91. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

92. The State Department has violated FOIA by refusing to disclose records that are responsive to the Center's State Department FOIA Request Number F-2017-08517.

93. The Center has a statutory right to a final determination from the State Department on its State Department FOIA Request Number F-2017-08517 in a manner that

complies with FOIA. The State Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

94. The Center's organizational activities will be adversely affected if the State Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

95. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Missed FOIA's Mandatory Determination Deadline for the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

96. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

97. The Commerce Department has violated FOIA by refusing to disclose records that are responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939.

98. The Center has a statutory right to a final determination from the Commerce Department on its Commerce Department FOIA Request Number DOC-OS-2017-000939 in a manner that complies with FOIA. The Commerce Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

99. The Center's organizational activities will be adversely affected if the Commerce Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

100. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Disclose All Responsive Records to the Center

COUNT ONE: The Interior Department Has Unlawfully Withheld Records Responsive to Interior Department FOIA Request Number OS-2017-00384

101. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

102. The Center has a statutory right to the records it seeks, and there is no legal basis for the Interior Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

103. The Interior Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Interior Department FOIA Request Number OS-2017-00384.

104. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Interior Department in the foreseeable future.

105. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's disclosure provisions as it has in this case.

106. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Has Unlawfully Withheld Records Responsive to EPA FOIA Request Number EPA-HQ-2017-005517

107. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

108. The Center has a statutory right to the records it seeks, and there is no legal basis for EPA to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

109. EPA has violated the Center's rights in this regard by withholding records that are responsive to the Center's EPA FOIA Request Number EPA-HQ-2017-005517.

110. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to EPA in the foreseeable future.

111. The Center's organizational activities will be adversely affected if EPA continues to violate FOIA's disclosure provisions as it has in this case.

112. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Has Unlawfully Withheld Records Responsive to Energy Department FOIA Request Number HQ-2017-00806

113. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

114. The Center has a statutory right to the records it seeks, and there is no legal basis for the Energy Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

115. The Energy Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Energy Department FOIA Request Number HQ-2017-00806.

116. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Energy Department in the foreseeable future.

117. The Center's organizational activities will be adversely affected if the Energy Department continues to violate FOIA's disclosure provisions as it has in this case.

118. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Has Unlawfully Withheld Records Responsive to The State Department FOIA Request Number F-2017-08517

119. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

120. The Center has a statutory right to the records it seeks, and there is no legal basis for the State Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

121. The State Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's State Department FOIA Request Number F-2017-08517.

122. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the State Department in the foreseeable future.

123. The Center's organizational activities will be adversely affected if the State Department continues to violate FOIA's disclosure provisions as it has in this case.

124. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Has Unlawfully Withheld Records Responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

125. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

126. The Center has a statutory right to the records it seeks, and there is no legal basis for the Commerce Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

127. The Commerce Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939.

128. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Commerce Department in the foreseeable future.

129. The Center's organizational activities will be adversely affected if the Commerce Department continues to violate FOIA's disclosure provisions as it has in this case.

130. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's Commerce Department FOIA Request Number DOC-NOAA-2017-001066

131. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

132. The Center has a statutory right to the records it seeks, and there is no legal basis for NOAA to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

133. NOAA has violated the Center's rights in this regard by withholding records that are responsive to the Center's NOAA FOIA Request Number DOC- NOAA-2017-001066.

134. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to NOAA in the foreseeable future.

135. The Center's organizational activities will be adversely affected if NOAA continues to violate FOIA's disclosure provisions as it has in this case.

136. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Conduct an Adequate Search for Responsive Records

COUNT ONE: The Interior Department Has Failed to Conduct an Adequate Search for All Records Responsive to Interior Department FOIA Request Number OS-2017-00384

137. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

138. The Center has a statutory right to have the Interior Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Interior Department

violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384.

139. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

140. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

141. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Has Failed to Conduct an Adequate Search for All Records Responsive to EPA FOIA Request Number EPA-HQ-2017-005517

142. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

143. The Center has a statutory right to have EPA process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). EPA violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517.

144. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

145. The Center's organizational activities will be adversely affected if EPA continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

146. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Has Failed to Conduct an Adequate Search for All Records Responsive to Energy Department FOIA Request Number HQ-2017-00806

147. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

148. The Center has a statutory right to have the Energy Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Energy Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number HQ-2017-00806.

149. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Energy Department in the foreseeable future.

150. The Center's organizational activities will be adversely affected if the Energy Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

151. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Has Failed to Conduct an Adequate Search for All Records Responsive to State Department FOIA Request Number F-2017-08517

152. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

153. The Center has a statutory right to have the State Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The State Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517.

154. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the State Department in the foreseeable future.

155. The Center's organizational activities will be adversely affected if the State Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

156. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

157. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

158. The Center has a statutory right to have the Commerce Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Commerce

Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939.

159. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Commerce Department in the foreseeable future.

160. The Center's organizational activities will be adversely affected if the Commerce Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

161. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's NOAA FOIA Request Number DOC-NOAA-2017-001066

162. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

163. The Center has a statutory right to have NOAA process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). NOAA violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066.

164. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to NOAA in the foreseeable future.

165. The Center's organizational activities will be adversely affected if NOAA continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

166. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

FOURTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records

COUNT ONE: The Interior Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

167. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

168. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

169. The Interior Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Interior Department FOIA Request Number OS-2017-00384.

170. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

171. The Center's organizational activities will be adversely affected if the Interior Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

172. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

173. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

174. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

175. EPA violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517.

176. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

177. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's disclosure provisions as it has in this case.

178. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

179. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

180. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

181. The Energy Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Energy Department FOIA Request Number HQ-2017-00806.

182. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Energy Department in the foreseeable future.

183. The Center's organizational activities will be adversely affected if the Energy Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

184. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

185. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

186. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

187. The State Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to State Department FOIA Request Number F-2017-08517.

188. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the State Department in the foreseeable future.

189. The Center's organizational activities will be adversely affected if the State Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

190. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

191. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

192. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

193. The Commerce Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939.

194. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Commerce Department in the foreseeable future.

195. The Center's organizational activities will be adversely affected if the Commerce Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

196. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

197. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

198. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

199. NOAA violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066.

200. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to NOAA in the foreseeable future.

201. The Center's organizational activities will be adversely affected if NOAA is allowed to continue violating FOIA's disclosure provisions as it has in this case.

202. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Fourth Claims)
Unlawfully Withheld or Unreasonably Delayed Actions that FOIA Requires

COUNT ONE: The Interior Department Withheld or Unreasonably Delayed Actions that FOIA Requires

203. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

204. The Interior Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose

records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (2) make a timely and lawful determination on Interior Department FOIA Request Number OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all responsive records to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to Interior Department FOIA Request Number OS-2017-00384 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Interior Department FOIA Request Number OS-2017-00384 in the event that records may be subject to an exemption. The Interior Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

205. Alternatively, the Interior Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (2) make a timely and lawful determination on to Interior Department FOIA Request Number OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to OS-2017-00384 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Interior Department FOIA Request Number OS-2017-00384 which contain any material that may be lawfully withheld under an exemption(s). The Interior Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

206. As alleged above, the Interior Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

207. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

208. The Center has no other adequate remedy at law to redress the violations noted above.

209. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT TWO: EPA Withheld or Unreasonably Delayed Actions that FOIA Requires

210. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

211. EPA unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all responsive records to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to EPA FOIA Request Number EPA-HQ-2017-005517 in the event that records may be subject to an exemption. EPA's failures constitute agency actions that are

unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

212. Alternatively, EPA unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which contain any material that may be lawfully withheld under an exemption(s). EPA's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

213. As alleged above, EPA's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

214. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, EPA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

215. The Center has no other adequate remedy at law to redress the violations noted above.

216. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT THREE: The Energy Department Withheld or Unreasonably Delayed Actions that FOIA Requires

217. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

218. The Energy Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all responsive records to Energy Department FOIA Request Number HQ-2017-00806; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Energy Department FOIA Request Number HQ-2017-00806 in the event that records may be subject to an exemption. The Energy Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

219. Alternatively, the Energy Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions

to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Energy Department FOIA Request Number HQ-2017-00806 which contain any material that may be lawfully withheld under an exemption(s). The Energy Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

220. As alleged above, the Energy Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

221. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, the Energy Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

222. The Center has no other adequate remedy at law to redress the violations noted above.

223. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FOUR: The State Department Withheld or Unreasonably Delayed Actions that FOIA Requires

224. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

225. The State Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to State Department FOIA Request Number F-2017-08517; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all responsive records to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are

responsive to State Department FOIA Request Number F-2017-08517 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to State Department FOIA Request Number F-2017-08517 in the event that records may be subject to an exemption. The State Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

226. Alternatively, the State Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to F-2017-085177; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are responsive to State Department FOIA Request Number F-2017-08517 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to State Department FOIA Request Number F-2017-08517 which contain any material that may be lawfully withheld under an exemption(s). The State Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

227. As alleged above, the State Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

228. The Center has suffered a legal wrong as a result of the State Department's failure to comply with the mandates of FOIA. As alleged above, the State Department violated its

statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

229. The Center has no other adequate remedy at law to redress the violations noted above.

230. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FIVE: The Commerce Department Withheld or Unreasonably Delayed Actions that FOIA Requires

231. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

232. The Commerce Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all responsive records to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Commerce Department FOIA Request Number DOC-OS-2017-000939 in the event that records may be subject to an exemption. The Commerce Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

233. Alternatively, the Commerce Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search

for and disclose records that are responsive to DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which contain any material that may be lawfully withheld under an exemption(s). The Commerce Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

234. As alleged above, the Commerce Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

235. The Center has suffered a legal wrong as a result of the Commerce Department's failure to comply with the mandates of FOIA. As alleged above, the Commerce Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

236. The Center has no other adequate remedy at law to redress the violations noted above.

237. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT SIX: NOAA Withheld or Unreasonably Delayed Actions that FOIA Requires

238. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

239. NOAA unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). NOAA's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

240. Alternatively, NOAA unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). NOAA's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

241. As alleged above, NOAA's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

242. The Center has suffered a legal wrong as a result of NOAA's failure to comply with the mandates of FOIA. As alleged above, NOAA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

243. The Center has no other adequate remedy at law to redress the violations noted above.

244. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

SIXTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Eighth Claims)
Violations of FOIA's Requirements Are Arbitrary, Capricious,
an Abuse of Discretion, or Otherwise Not in Accordance with Law

COUNT ONE: The Interior Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

245. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

246. The Interior Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to OS-2017-00384; (2) make a timely and lawful determination on OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to Interior Department FOIA Request Number OS-2017-00384 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Interior Department FOIA Request

Number OS-2017-00384 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Interior Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

247. As alleged above, the Interior Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

248. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

249. The Center has no other adequate remedy at law to redress the violations noted above.

250. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT TWO: EPA's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

251. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

252. EPA violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which may

not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, EPA's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

253. As alleged above, EPA's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

254. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, EPA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

255. The Center has no other adequate remedy at law to redress the violations noted above.

256. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT THREE: The Energy Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

257. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

258. The Energy Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number

HQ-2017-00806s; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Energy Department FOIA Request Number HQ-2017-00806 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Energy Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

259. As alleged above, the Energy Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

260. The Center has suffered a legal wrong as a result of the Energy Department's failure to comply with the mandates of FOIA. As alleged above, the Energy Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

261. The Center has no other adequate remedy at law to redress the violations noted above.

262. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FOUR: The State Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

263. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

264. The State Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to State Department FOIA

Request Number F-2017-08517; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are responsive to State Department FOIA Request Number F-2017-08517 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to State Department FOIA Request Number F-2017-08517 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the State Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

265. As alleged above, the State Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

266. The Center has suffered a legal wrong as a result of the State Department's failure to comply with the mandates of FOIA. As alleged above, the State Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

267. The Center has no other adequate remedy at law to redress the violations noted above.

268. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FIVE: The Commerce Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

269. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

270. The Commerce Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number DOC-OS-2017-000939; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Commerce Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

271. As alleged above, the Commerce Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

272. The Center has suffered a legal wrong as a result of the Commerce Department's failure to comply with the mandates of FOIA. As alleged above, the Commerce Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

273. The Center has no other adequate remedy at law to redress the violations noted above.

274. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT SIX: NOAA's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

275. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

276. NOAA violated FOIA's statutory mandates due to its failure and refusal to (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, NOAA's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

277. As alleged above, NOAA's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

278. The Center has suffered a legal wrong as a result of NOAA's failure to comply with the mandates of FOIA. As alleged above, NOAA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

279. The Center has no other adequate remedy at law to redress the violations noted above.

280. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Plaintiff's FOIA Requests, numbers OS-2017-00384, EPA-HQ-2017-005517, HQ-2017-00806, F-2017-08517, DOC-OS-2017-000939, and DOC-NOAA-2017-001066 with the cut-off date for such searches being the date the searches are conducted, and to provide Plaintiff, by a date certain, with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action.

2. Declare that Defendants' failures to timely make determinations on Plaintiff's FOIA Requests are unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i), or in the alternative, are an agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

3. Declare that Defendants' failures to properly apply FOIA exemptions, 5 U.S.C. § 552(b), are unlawful under FOIA, or in the alternative, are an agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

4. Declare that Defendants' failures to undertake a search for and disclose to Plaintiff all records that are responsive to Plaintiff's FOIA Requests, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i), or in the alternative, are an agency action that

has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

5. Declare that Defendants' failures to provide Plaintiff with reasonably segregable portions of records which may be lawfully subject to a FOIA exemption, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(7)(b), or in the alternative, are agency actions that have been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

6. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.

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

DATED: August 16, 2017

Respectfully submitted,

/s/ Margaret E. Townsend

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/s/ Amy R. Atwood

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY
378 North Main Avenue
Tucson, AZ 85701,

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR
1849 C Street, NW
Washington, D.C. 20240,

U.S. ENVIRONMENTAL PROTECTION
AGENCY
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460,

U.S. DEPARTMENT OF ENERGY
1000 Independence Avenue, SW
Washington, D.C. 20585,

U.S. DEPARTMENT OF STATE
2201 C. Street, NW
Washington, D.C. 20037,

U.S. DEPARTMENT OF COMMERCE
1401 Constitution Avenue, NW
Washington, D.C. 20230,

and

U.S. NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
1315 East-West Highway
Silver Spring, MD 20910

Defendants.

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Case No.: 1:17-cv-0974 (KBJ)

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INTRODUCTION

1. The Center for Biological Diversity (“Center”)—an environmental conservation organization that works to protect native wildlife species and their habitats—challenges the failure of the U.S. Department of Interior, U.S. Environmental Protection Agency, U.S.

Department of Energy, U.S. Department of State, U.S. Department of Commerce, and U.S.

National Oceanic and Atmospheric Administration to provide records concerning the Trump administration’s censorship of these federal departments’ and their component agencies’

discussion or dissemination of information about climate change, in violation of the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA” or “Act”), or alternatively, the Administrative Procedure Act, 5 U.S.C. §§ 701-06 (“APA”).

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2. From January through March 2017, news outlets reported that the Trump administration directed numerous federal departments and agencies to remove information from their websites about climate change and/or to cease use of phrases such as “climate change,” “emissions reduction,” or “Paris agreement” in agency documents. These departments and agencies include the six named defendants in this action.

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3. To understand these actions, the Center filed FOIA requests with each of the defendants, seeking directives or communications barring or removing climate change-related words or phrases from formal communications as well as the information, such as webpages about climate change, that has been removed from public view.

4. However, although each defendant acknowledged the Center’s request, none have provided any responsive records or stated when they might do so.

5. Defendants are unlawfully withholding the records by failing to search for and provide all responsive records to the Center. The defendants’ failure to comply with FOIA by

releasing all records related to the censorship of climate change-related words and phrases is contrary to FOIA and undermines FOIA's policy of government transparency.

6. Because prompt access to these records is necessary to effectuate FOIA's purpose, the Center seeks declaratory relief establishing that defendants are in violation of FOIA, or alternatively, the APA. The Center also seeks injunctive relief directing defendants to provide responsive records without any further delay.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

8. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district, because a portion of the responsive records may be found in this district.

9. Declaratory relief is appropriate under 28 U.S.C. § 2201.

10. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit conservation organization with offices throughout the United States. The Center has more than 58,000 members. The Center and its members are harmed by EPA's violations of FOIA, or alternatively the APA, as such violations preclude the Center from gaining a full understanding of the circumstances, rationales, and individuals involved in the Trump administration's censorship of climate change-related information.

12. Defendant U.S. DEPARTMENT OF THE INTERIOR (“Interior Department”) is an independent agency of the executive branch of the U.S. government. The Interior Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13. Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY (“EPA”) is an independent agency of the executive branch of the U.S. government. EPA is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

14. Defendant U.S. DEPARTMENT OF ENERGY (“Energy Department”) is an independent agency of the executive branch of the U.S. government. The Energy Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

15. Defendant U.S. DEPARTMENT OF STATE (“State Department”) is an independent agency of the executive branch of the U.S. government. The State Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

16. Defendant U.S. DEPARTMENT OF COMMERCE (“Commerce Department”) is an independent agency of the executive branch of the U.S. government. The Commerce Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

17. Defendant U.S. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (“NOAA”) is an independent agency of the executive branch of the U.S.

government. NOAA is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

STATUTORY BACKGROUND

18. FOIA's basic purpose is government transparency. It establishes the public's right to access all federal agency records unless such records may be withheld pursuant to one of nine, narrowly construed FOIA exemptions. 5 U.S.C. § 552(b)(1)-(9).

19. FOIA imposes strict and rigorous deadlines on federal agencies when they receive a request for records pursuant to FOIA. Specifically, an agency must determine whether to disclose responsive records and notify the requester of its determination within 20 working days of receiving a FOIA request, and it must make records "promptly" available unless it can establish that certain unusual circumstances are present and/or that it may lawfully withhold records, or portions thereof, from disclosure. *Id.* § 552(a)(3)(A), (a)(6). Also within 20 working days, the agency must inform the requester that it has a right to appeal the agency's determination. *Id.* § 552(a)(6)(A)(i).

20. FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

21. Congress has specified limited circumstances in which federal agencies may obtain more time to make the determination that is required by 5 U.S.C. § 552(a)(6)(A)(i).

22. First, an agency may toll the 20-working-day deadline to seek additional information or clarification from a requester, but that tolling period ends when the agency receives such information or clarification. *Id.* § 552(a)(6)(A)(ii).

23. Second, an agency may extend the 20-working-day deadline for an additional 10 working days by giving a written notice to the requester that sets forth "unusual circumstances"

to justify a deadline extension which also requires that it provide the date by which the agency expects to make the determination. *Id.* § 552(a)(6)(B)(i). However, to invoke such “unusual circumstances,” the agency must provide the requester with “an opportunity to limit the scope of the request so that it may be processed within [20 working days] or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii). In addition, when asserting unusual circumstances, the agency “shall make available its FOIA Public Liaison” to “assist in the resolution of any disputes between the requester and the agency.” *Id.*

24. FOIA requires each agency to make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records that are responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D).

25. FOIA requires federal agencies to expeditiously disclose requested records, *see id.* § 552, and mandates a policy of broad disclosure of government records. Any inquiry under FOIA brings with it a strong presumption in favor of disclosure.

26. Congress recognized that in certain, limited instances, records may be withheld as exempt from FOIA’s broad disclosure mandate, and thus created nine categories of exemptions. *Id.* § 552(b). These exemptions, however, are narrowly construed in light of FOIA’s dominant objective of disclosure, not secrecy.

27. The U.S. district courts have jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

28. Alternatively, an agency’s response to a FOIA request and/or a FOIA appeal is subject to judicial review under the APA, which confers a right of judicial review on any person

who is adversely affected by agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is unlawfully withheld or unreasonably delayed. *Id.* § 706(1). District courts must set aside any agency action that is found to be “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” *Id.* § 706(2)(A).

FACTUAL BACKGROUND

Interior Department FOIA Request (OS-2017-00384)

29. On March 30, 2017, the Center submitted a FOIA request to the Interior Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

30. The same day, the Interior Department acknowledged the Center’s request and assigned it tracking number OS-2017-00384 (“Interior Department FOIA Request”).

31. A determination on the Center’s FOIA request to the Interior Department was due by April 27, 2017, which is 20 working days after the date of the Interior Department’s acknowledgement of the request.

32. As of the date of the filing of this amended complaint, which is 77 working days past the 20-working-day deadline, the Interior Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center’s FOIA request.

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EPA FOIA Request (EPA-HQ-2017-005517)

33. On March 30, 2017, the Center submitted a FOIA request to the EPA, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

34. The same day, the EPA acknowledged the Center’s request and assigned it tracking number EPA-HQ-2017-005517 (“EPA FOIA Request”). On March 12, 2017, EPA granted a waiver of fees in connection with the request.

35. A determination on the Center’s FOIA request to the EPA was due by April 27, 2017, which is 20 working days after the date of the EPA’s acknowledgement of the request.

36. After receiving no further communications from EPA regarding this request, by letter dated May 8, 2017, the Center informed EPA that its determination was overdue and offered to assist EPA in making a determination on the Center’s EPA FOIA Request. The Center also requested an estimate for when EPA would make a determination on the Center’s FOIA request.

37. As of the date of the filing of this amended complaint, which is 77 working days past the 20-working-day deadline, EPA has not responded to the Center’s May 8, 2017 letter, requested additional time to respond to the Center’s FOIA request, provided any responsive records, made a determination, or provided an estimated date of completion of the Center’s FOIA request.

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Energy Department FOIA Request (HQ-2017-00806)

38. On March 30, 2017, the Center submitted a FOIA request to the Energy Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

39. The next day, on March 31, 2017, the Energy Department acknowledged the Center’s request and assigned it tracking number HQ-2017-00806 (“Energy Department FOIA Request”).

40. On April 11, 2017, a representative of the Energy Department, Ms. Natalie Anderson, contacted Ms. Margaret E. Townsend of the Center for Biological Diversity by phone and email. Ms. Anderson stated that she wanted to clarify the timeframe for records that are responsive to the Center’s Energy Department FOIA Request. In response, Ms. Townsend informed Ms. Anderson that the Energy Department could search for and provide all responsive records that were generated on or after November 9, 2016.

41. Ms. Anderson also stated that the Energy Department had received many FOIA requests that are similar to the Center’s Energy Department FOIA Request, and in an email dated April 11, 2017, suggested that if the Center would agree to limit the department’s search to two of its program offices—specifically, the Office of International Affairs (“OIA”) and the Office of Energy Policy and Systems Analysis (“EPSA”)—this “should allow [the Energy Department] to

provide a response more quickly.” Accordingly, the Center agreed to limit the department’s search to the OIA and EPSA.

42. Also in her April 11, 2017 email, Ms. Anderson asked if the Center would agree to eliminate the phrases “including but not limited to” and “any related words or phrases” from its request, and if the Center would like to include any search terms in addition to “climate change,” “global warming,” “climate disruption,” “greenhouse gas emissions,” “emissions reductions,” and/or “Paris agreement.” In response, Ms. Townsend added the terms “climate” and “fossil fuels” to the search terms to be used by the Energy Department during its search for responsive records from the OIA and EPSA.

43. By email dated April 13, 2017, Ms. Anderson confirmed the scope of the department’s search for responsive records, stating that the department would “move forward with processing.”

44. By letter dated April 26, 2017, Energy Department FOIA Officer Alexander C. Morris confirmed the agreement of Ms. Anderson and Ms. Townsend regarding the scope of the department’s search, informed the Center that the request was assigned to OIA and EPSA, and granting the Center’s request for a waiver of fees.

45. A determination on the Center’s Energy Department FOIA Request was due on May 11, 2017, which is 20 working days after the date of Ms. Anderson’s email stating that the department was prepared to “move forward with processing.”

46. ~~By letter dated August 11, 2017, which was 65 working days past the 20-~~
working-day deadline, the Energy Department provided a determination in response to the
Center’s FOIA request.

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47. In its determination, the Energy Department stated that it possessed no responsive records.

48. News articles indicate that the Energy Department likely possesses responsive records. For example, in an article date March 29, 2017, *Politico* reported that “[a] supervisor at the Energy Department’s international climate office told staff this week not to use the phrases ‘climate change,’ ‘emissions reduction’ or ‘Paris Agreement’ in written memos, briefings or other written communication” See Eric Wolff, Energy Department climate office bans use of phrase “climate change”, *Politico* (Mar. 29, 2017), <http://www.politico.com/story/2017/03/energy-department-climate-change-phrases-banned-236655>.

49. The Center challenges the adequacy of the Energy Department’s search for responsive records and the Energy Department’s failure to provide all responsive records to the Center.

State Department FOIA Request

50. On April 3, 2017, the Center submitted a FOIA request to the State Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

51. The next day, on April 4, 2017, the State Department acknowledged the Center’s request and assigned it tracking number F-2017-08517 (“State Department FOIA Request”).

52. By form letter dated April 10, 2017, the Requester Communications Branch of the State Department's Office of Information Programs & Services re-acknowledged receipt of the Center's FOIA request, and it also granted a public interest waiver of fees that are incurred in processing the request.

53. After receiving no further communications from the State Department regarding this request, by letter dated May 31, 2017, the Center informed the State Department that its determination was overdue and offered to assist the State Department in making a determination on the Center's State Department FOIA Request. The Center also requested an estimate for when the State Department would make a determination on the Center's FOIA request.

54. By email dated June 1, 2017, Charlotte W. Duckett confirmed the State Department's receipt of the Center's May 31, 2017 communication. Ms. Duckett stated that a copy of the Center's May 31, 2017 communication "was forwarded to the office that is processing your request" and that "our office has requested an estimated completion date for your request." Ms. Duckett did not provide an estimated date of completion of the State Department's determination on the Center's request.

55. A determination on the Center's FOIA request to the State Department was due by May 2, 2017, which is 20 working days after the date of the State Department's acknowledgement of the request.

56. As of the date of the filing of this amended complaint, which is 74 working days past the 20-working-day deadline, the State Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center's FOIA request.

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Commerce Department FOIA Request (DOC-OS-2017-000939)

57. On April 3, 2017, the Center submitted a FOIA request to the Commerce Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

58. The same day, the Commerce Department acknowledged the Center’s request and assigned it tracking number DOC-OS-2017-000939 (“Commerce Department FOIA Request”). On April 10, 2017, the Commerce Department granted a waiver of fees in connection with the request.

59. On April 13, 2017, the Commerce Department sent a letter to the Center requesting clarification of (1) the time frame of the records request and (2) the type of records requested.

60. The Center provided the requested clarification to the Commerce Department via electronic mail on April 17, 2017. The Center informed the Commerce Department that “[t]he timeframe of the records request is November 9, 2016 to the date of the search,” and that

[t]he type of records requested is all records, as defined by FOIA, and included in the following paragraph from our request:

For purposes of this request, “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind including electronic as well as paper documents, e-mails, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, data bases, drawings, surveys, graphs, charts,

photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

61. On May 23, 2017, Commerce Department FOIA Specialist Ms. Ayana Crawford called Ms. Townsend to ask if the Center would respond to the agency's request for clarification before Ms. Crawford took action to close the request. Ms. Townsend informed Ms. Crawford that the Center had already provided the requested clarification on April 17, 2017. Ms. Crawford asked Ms. Townsend to resend it. Ms. Townsend resent the email clarification the same day.

62. A determination on the Center's Commerce Department FOIA Request was due on May 3, 2017, which is 20 working days after the Commerce Department received the Center's FOIA request.

63. Even if the Commerce Department had reasonably suspended its timeline for a determination on the Center's FOIA request, by relying on May 23, 2017 as the date that the Center provided clarification, then the Center's Commerce Department FOIA Request would have been due on June 9, 2017.

64. As of the date of the filing of this Amended complaint, which is 47 workdays past the June 9, 2017 deadline, the Commerce Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center's Commerce Department FOIA request.

NOAA FOIA Request (DOC-NOAA-2017-001066)

65. On April 21, 2017, the Center submitted a FOIA request to NOAA, requesting "all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-

related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

66. The same day, NOAA acknowledged the Center’s request and assigned it tracking number DOC-NOAA-2017-001066 (“NOAA FOIA Request”). On April 24, 2014, NOAA provided a formal acknowledgement letter to the Center.

67. On May 3, 2017, NOAA informed the Center that it determined that a waiver of fees in connection with the request was not applicable as the request was “not billable.”

68. On May 10, 2017, NOAA provided a final “no records” determination to the Center and informed the Center of its right to appeal the determination.

69. The Center appealed NOAA’s “no records” determination on June 30, 2017. The same day, NOAA acknowledged the Center’s appeal and assigned it tracking number DOC-OS-2017-001456 (“NOAA FOIA Appeal”)

70. NOAA affirmed its decision on the Center’s NOAA FOIA Appeal on July 3, 2017. In the letter, the agency informed the Center that “[r]ecords indicate that a search was tasked to the NOAA National Environmental Satellite Data and Information Services (NESDIS) and that a search of the NESDIS correspondence unit was performed.” NOAA stated that “it is reasonable to assume that the NESDIS correspondence unit would hold any and all documents responsive to [the Center’s] request.” NOAA also informed the Center that it has “the right to obtain judicial review as provided for in 5 U.S.C. § 552(a)(4)(8).”

71. News articles indicate that NOAA possesses responsive records. For example, in an article date July 13, 2017, the *New York Times* reported that phrasing in a NOAA news release accompanying a report about the warming ability of global emissions of greenhouse

gases omitted any link of “human activity” to emissions. *See* Lisa Friedman, *Climate-Altering Gases Spiked in 2016, Federal Scientists Report*, NY Times (July 13, 2017), <https://www.nytimes.com/2017/07/13/climate/greenhouse-gases-spike-noaa-global-warming.html>.

72. The Center challenges the adequacy of NOAA’s search for responsive records and NOAA’s failure to provide all responsive records to the Center.

All Requests

73. None of FOIA’s nine exemptions to the statute’s disclosure mandate apply to the records that are responsive to any of the Center’s FOIA requests. *Id.* § 552(b).

74. The Center has been required to expend resources to prosecute this action.

CLAIMS FOR RELIEF

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FIRST CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Comply with FOIA’s Mandatory Determination Deadline

COUNT ONE: The Interior Department Missed FOIA’s Mandatory Determination Deadline for the Center’s Interior Department FOIA Request Number OS-2017-00384

75. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

76. The Interior Department has violated FOIA by refusing to disclose records that are responsive to the Center’s Interior Department FOIA Request Number OS-2017-00384.

77. The Center has a statutory right to a final determination from the Interior Department on FOIA Request Number OS-2017-00384 in a manner that complies with FOIA. The Interior Department has violated the Center’s rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

78. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

79. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's disclosure provisions as it has in this case.

80. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, the Interior Department will continue to violate Plaintiff's rights to receive public records under FOIA.

COUNT TWO: EPA Missed FOIA's Mandatory Determination Deadline for the Center's EPA FOIA Request Number EPA-HQ-2017-005517

81. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

82. EPA has violated FOIA by refusing to disclose records that are responsive to the Center's EPA FOIA Request Number EPA-HQ-2017-005517.

83. The Center has a statutory right to a final determination from EPA on its EPA FOIA Request Number EPA-HQ-2017-005517 in a manner that complies with FOIA. EPA has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

84. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's decision deadlines as it has in this case.

85. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Missed FOIA's Mandatory Determination Deadline for the Center's Energy Department FOIA Request Number EPA-HQ-2017-005517

86. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

87. The Energy Department has violated FOIA by refusing to disclose records that are responsive to the Center's Energy Department FOIA Request Number HQ-2017-00806.

88. The Center has a statutory right to a final determination from the Energy Department on its Energy Department FOIA Request Number HQ-2017-00806 in a manner that complies with FOIA. The Energy Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

89. The Center's organizational activities will be adversely affected if the Energy Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

90. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Missed FOIA's Mandatory Determination Deadline for the Center's State Department FOIA Request Number F-2017-08517

91. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

92. The State Department has violated FOIA by refusing to disclose records that are responsive to the Center's State Department FOIA Request Number F-2017-08517.

93. The Center has a statutory right to a final determination from the State Department on its State Department FOIA Request Number F-2017-08517 in a manner that

complies with FOIA. The State Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

94. The Center's organizational activities will be adversely affected if the State Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

95. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Missed FOIA's Mandatory Determination Deadline for the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

96. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

97. The Commerce Department has violated FOIA by refusing to disclose records that are responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939.

98. The Center has a statutory right to a final determination from the Commerce Department on its Commerce Department FOIA Request Number DOC-OS-2017-000939 in a manner that complies with FOIA. The Commerce Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

99. The Center's organizational activities will be adversely affected if the Commerce Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

100. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Disclose All Responsive Records to the Center

COUNT ONE: The Interior Department Has Unlawfully Withheld Records Responsive to Interior Department FOIA Request Number OS-2017-00384

101. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

102. The Center has a statutory right to the records it seeks, and there is no legal basis for the Interior Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

103. The Interior Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Interior Department FOIA Request Number OS-2017-00384.

104. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Interior Department in the foreseeable future.

105. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's disclosure provisions as it has in this case.

106. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Has Unlawfully Withheld Records Responsive to EPA FOIA Request Number EPA-HQ-2017-005517

107. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

108. The Center has a statutory right to the records it seeks, and there is no legal basis for EPA to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

109. EPA has violated the Center's rights in this regard by withholding records that are responsive to the Center's EPA FOIA Request Number EPA-HQ-2017-005517.

110. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to EPA in the foreseeable future.

111. The Center's organizational activities will be adversely affected if EPA continues to violate FOIA's disclosure provisions as it has in this case.

112. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Has Unlawfully Withheld Records Responsive to Energy Department FOIA Request Number HQ-2017-00806

113. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

114. The Center has a statutory right to the records it seeks, and there is no legal basis for the Energy Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

115. The Energy Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Energy Department FOIA Request Number HQ-2017-00806.

116. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Energy Department in the foreseeable future.

117. The Center's organizational activities will be adversely affected if the Energy Department continues to violate FOIA's disclosure provisions as it has in this case.

118. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Has Unlawfully Withheld Records Responsive to The State Department FOIA Request Number F-2017-08517

119. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

120. The Center has a statutory right to the records it seeks, and there is no legal basis for the State Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

121. The State Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's State Department FOIA Request Number F-2017-08517.

122. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the State Department in the foreseeable future.

123. The Center's organizational activities will be adversely affected if the State Department continues to violate FOIA's disclosure provisions as it has in this case.

124. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Has Unlawfully Withheld Records Responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

125. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

126. The Center has a statutory right to the records it seeks, and there is no legal basis for the Commerce Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. See 5 U.S.C. § 552(b)(1)-(9).

127. The Commerce Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939.

128. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Commerce Department in the foreseeable future.

129. The Center's organizational activities will be adversely affected if the Commerce Department continues to violate FOIA's disclosure provisions as it has in this case.

130. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's Commerce Department FOIA Request Number DOC-NOAA-2017-001066

131. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

132. The Center has a statutory right to the records it seeks, and there is no legal basis for NOAA to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

133. NOAA has violated the Center's rights in this regard by withholding records that are responsive to the Center's NOAA FOIA Request Number DOC- NOAA-2017-001066.

134. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to NOAA in the foreseeable future.

135. The Center's organizational activities will be adversely affected if NOAA continues to violate FOIA's disclosure provisions as it has in this case.

136. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Conduct an Adequate Search for Responsive Records

COUNT ONE: The Interior Department Has Failed to Conduct an Adequate Search for All Records Responsive to Interior Department FOIA Request Number OS-2017-00384

137. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

138. The Center has a statutory right to have the Interior Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Interior Department

violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384.

139. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

140. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

141. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Has Failed to Conduct an Adequate Search for All Records Responsive to EPA FOIA Request Number EPA-HQ-2017-005517

142. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

143. The Center has a statutory right to have EPA process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). EPA violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517.

144. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

145. The Center's organizational activities will be adversely affected if EPA continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

146. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Has Failed to Conduct an Adequate Search for All Records Responsive to Energy Department FOIA Request Number HQ-2017-00806

147. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

148. The Center has a statutory right to have the Energy Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Energy Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number HQ-2017-00806.

149. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Energy Department in the foreseeable future.

150. The Center's organizational activities will be adversely affected if the Energy Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

151. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Has Failed to Conduct an Adequate Search for All Records Responsive to State Department FOIA Request Number F-2017-08517

152. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

153. The Center has a statutory right to have the State Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The State Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517.

154. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the State Department in the foreseeable future.

155. The Center's organizational activities will be adversely affected if the State Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

156. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

157. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

158. The Center has a statutory right to have the Commerce Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Commerce

Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939.

159. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Commerce Department in the foreseeable future.

160. The Center's organizational activities will be adversely affected if the Commerce Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

161. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's NOAA FOIA Request Number DOC-NOAA-2017-001066

162. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

163. The Center has a statutory right to have NOAA process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). NOAA violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066.

164. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to NOAA in the foreseeable future.

165. The Center's organizational activities will be adversely affected if NOAA continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

166. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

FOURTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records

COUNT ONE: The Interior Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

167. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

168. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

169. The Interior Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Interior Department FOIA Request Number OS-2017-00384.

170. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

171. The Center's organizational activities will be adversely affected if the Interior Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

172. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

173. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

174. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

175. EPA violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517.

176. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

177. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's disclosure provisions as it has in this case.

178. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

179. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

180. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

181. The Energy Department violated the Center’s rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Energy Department FOIA Request Number HQ-2017-00806.

182. Based on the nature of the Center’s organizational activities, it will undoubtedly continue to employ FOIA’s provisions in record requests to the Energy Department in the foreseeable future.

183. The Center’s organizational activities will be adversely affected if the Energy Department is allowed to continue violating FOIA’s disclosure provisions as it has in this case.

184. Unless enjoined and made subject to a declaration of the Center’s legal rights by this Court, the Energy Department will continue to violate the Center’s rights to receive public records under FOIA.

COUNT FOUR: The State Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

185. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

186. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA’s exemptions. 5 U.S.C. § 552(b).

187. The State Department violated the Center’s rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to State Department FOIA Request Number ~~F-2017-08517~~.

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188. Based on the nature of the Center’s organizational activities, it will undoubtedly continue to employ FOIA’s provisions in record requests to the State Department in the foreseeable future.

189. The Center's organizational activities will be adversely affected if the State Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

190. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

191. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

192. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

193. The Commerce Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939.

194. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Commerce Department in the foreseeable future.

195. The Center's organizational activities will be adversely affected if the Commerce Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

196. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

197. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

198. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

199. NOAA violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066.

200. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to NOAA in the foreseeable future.

201. The Center's organizational activities will be adversely affected if NOAA is allowed to continue violating FOIA's disclosure provisions as it has in this case.

202. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Fourth Claims)
Unlawfully Withheld or Unreasonably Delayed Actions that FOIA Requires

COUNT ONE: The Interior Department Withheld or Unreasonably Delayed Actions that FOIA Requires

203. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

204. The Interior Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose

records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (2) make a timely and lawful determination on Interior Department FOIA Request Number OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all responsive records to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to Interior Department FOIA Request Number OS-2017-00384 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Interior Department FOIA Request Number OS-2017-00384 in the event that records may be subject to an exemption. The Interior Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

205. Alternatively, the Interior Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (2) make a timely and lawful determination on to Interior Department FOIA Request Number OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to OS-2017-00384 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Interior Department FOIA Request Number OS-2017-00384 which contain any material that may be lawfully withheld under an exemption(s). The Interior Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

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206. As alleged above, the Interior Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

207. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

208. The Center has no other adequate remedy at law to redress the violations noted above.

209. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT TWO: EPA Withheld or Unreasonably Delayed Actions that FOIA Requires

210. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

211. EPA unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all responsive records to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to EPA FOIA Request Number EPA-HQ-2017-005517 in the event that records may be subject to an exemption. EPA's failures constitute agency actions that are

unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

212. Alternatively, EPA unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which contain any material that may be lawfully withheld under an exemption(s). EPA's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

213. As alleged above, EPA's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

214. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, EPA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

215. The Center has no other adequate remedy at law to redress the violations noted above.

216. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT THREE: The Energy Department Withheld or Unreasonably Delayed Actions that FOIA Requires

217. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

218. The Energy Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all responsive records to Energy Department FOIA Request Number HQ-2017-00806; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Energy Department FOIA Request Number HQ-2017-00806 in the event that records may be subject to an exemption. The Energy Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

219. Alternatively, the Energy Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions

to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Energy Department FOIA Request Number HQ-2017-00806 which contain any material that may be lawfully withheld under an exemption(s). The Energy Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

220. As alleged above, the Energy Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

221. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, the Energy Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

222. The Center has no other adequate remedy at law to redress the violations noted above.

223. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FOUR: The State Department Withheld or Unreasonably Delayed Actions that FOIA Requires

224. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

225. The State Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to State Department FOIA Request Number F-2017-08517; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all responsive records to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are

responsive to State Department FOIA Request Number F-2017-08517 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to State Department FOIA Request Number F-2017-08517 in the event that records may be subject to an exemption. The State Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

226. Alternatively, the State Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to F-2017-085177; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are responsive to State Department FOIA Request Number F-2017-08517 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to State Department FOIA Request Number F-2017-08517 which contain any material that may be lawfully withheld under an exemption(s). The State Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

227. As alleged above, the State Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

228. The Center has suffered a legal wrong as a result of the State Department's failure to comply with the mandates of FOIA. As alleged above, the State Department violated its

statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

229. The Center has no other adequate remedy at law to redress the violations noted above.

230. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FIVE: The Commerce Department Withheld or Unreasonably Delayed Actions that FOIA Requires

231. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

232. The Commerce Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all responsive records to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Commerce Department FOIA Request Number DOC-OS-2017-000939 in the event that records may be subject to an exemption. The Commerce Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

233. Alternatively, the Commerce Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search

for and disclose records that are responsive to DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which contain any material that may be lawfully withheld under an exemption(s). The Commerce Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

234. As alleged above, the Commerce Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

235. The Center has suffered a legal wrong as a result of the Commerce Department's failure to comply with the mandates of FOIA. As alleged above, the Commerce Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

236. The Center has no other adequate remedy at law to redress the violations noted above.

237. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT SIX: NOAA Withheld or Unreasonably Delayed Actions that FOIA Requires

238. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

239. NOAA unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). NOAA's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

240. Alternatively, NOAA unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). NOAA's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

241. As alleged above, NOAA's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

242. The Center has suffered a legal wrong as a result of NOAA's failure to comply with the mandates of FOIA. As alleged above, NOAA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

243. The Center has no other adequate remedy at law to redress the violations noted above.

244. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

SIXTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Eighth Claims)
Violations of FOIA's Requirements Are Arbitrary, Capricious,
an Abuse of Discretion, or Otherwise Not in Accordance with Law

COUNT ONE: The Interior Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

245. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

246. The Interior Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to OS-2017-00384; (2) make a timely and lawful determination on OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to Interior Department FOIA Request Number OS-2017-00384 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Interior Department FOIA Request

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Number OS-2017-00384 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Interior Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

247. As alleged above, the Interior Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

248. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

249. The Center has no other adequate remedy at law to redress the violations noted above.

250. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT TWO: EPA's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

251. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

252. EPA violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which may

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not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, EPA's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

253. As alleged above, EPA's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

254. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, EPA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

255. The Center has no other adequate remedy at law to redress the violations noted above.

256. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT THREE: The Energy Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

257. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

258. The Energy Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number

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HQ-2017-00806s; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Energy Department FOIA Request Number HQ-2017-00806 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Energy Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

259. As alleged above, the Energy Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

260. The Center has suffered a legal wrong as a result of the Energy Department's failure to comply with the mandates of FOIA. As alleged above, the Energy Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

261. The Center has no other adequate remedy at law to redress the violations noted above.

262. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FOUR: The State Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

263. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

264. The State Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to State Department FOIA

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Request Number F-2017-08517; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are responsive to State Department FOIA Request Number F-2017-08517 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to State Department FOIA Request Number F-2017-08517 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the State Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

265. As alleged above, the State Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

266. The Center has suffered a legal wrong as a result of ~~the State Department's failure~~ to comply with the mandates of FOIA. As alleged above, the State Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

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267. The Center has no other adequate remedy at law to redress the violations noted above.

268. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

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COUNT FIVE: The Commerce Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

269. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

270. The Commerce Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number DOC-OS-2017-000939; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Commerce Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

271. As alleged above, the Commerce Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

272. The Center has suffered a legal wrong as a result of the Commerce Department's failure to comply with the mandates of FOIA. As alleged above, the Commerce Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

273. The Center has no other adequate remedy at law to redress the violations noted above.

274. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT SIX: NOAA's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

275. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

276. NOAA violated FOIA's statutory mandates due to its failure and refusal to (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, NOAA's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

277. As alleged above, NOAA's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

278. The Center has suffered a legal wrong as a result of NOAA's failure to comply with the mandates of FOIA. As alleged above, NOAA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

279. The Center has no other adequate remedy at law to redress the violations noted above.

280. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Plaintiff's FOIA Requests, numbers OS-2017-00384, EPA-HQ-2017-005517, HQ-2017-00806, F-2017-08517, DOC-OS-2017-000939, and DOC-NOAA-2017-001066 with the cut-off date for such searches being the date the searches are conducted, and to provide Plaintiff, by a date certain, with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action.

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2. Declare that Defendants' failures to timely make determinations on Plaintiff's FOIA Requests are unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i), or in the alternative, are an agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

3. Declare that Defendants' failures to properly apply FOIA exemptions, 5 U.S.C. § 552(b), are unlawful under FOIA, or in the alternative, are an agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

4. Declare that Defendants' failures to undertake a search for and disclose to Plaintiff all records that are responsive to Plaintiff's FOIA Requests, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i), or in the alternative, are an agency action that

has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

5. Declare that Defendants' failures to provide Plaintiff with reasonably segregable portions of records which may be lawfully subject to a FOIA exemption, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(7)(b), or in the alternative, are agency actions that have been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

6. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.

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

DATED: August 16, 2017

Respectfully submitted,

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/s/ Margaret E. Townsend
Margaret E. Townsend (D.C. Bar No OR0008)
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374
(971) 717-6409
mtownsend@biologicaldiversity.org

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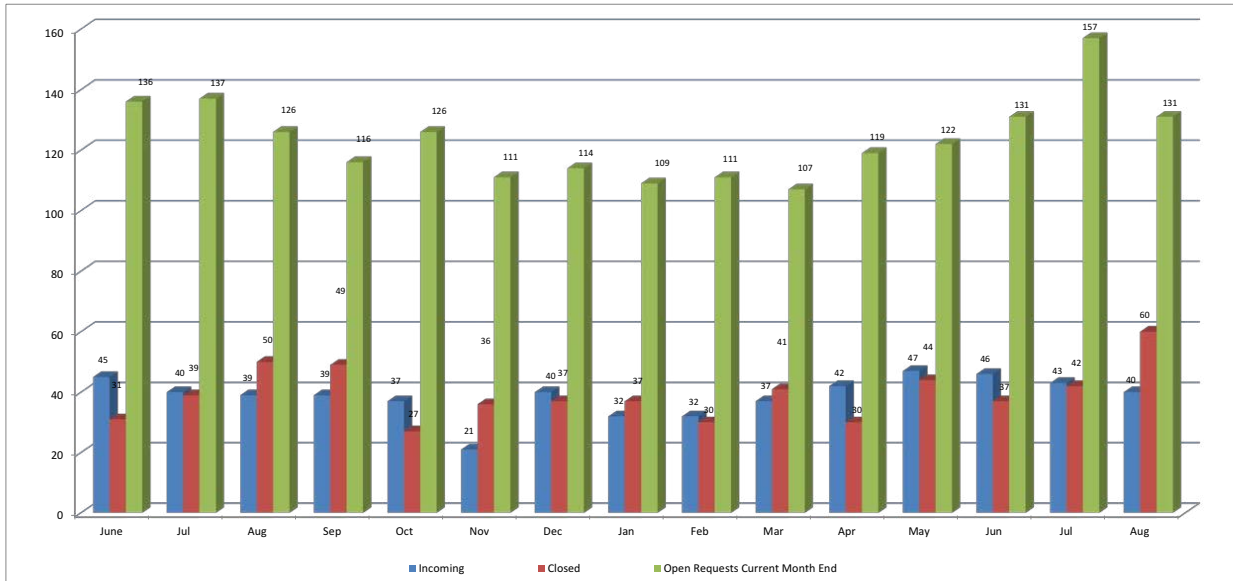
/s/ Amy R. Atwood
Amy R. Atwood (D.C. Bar No. 470258)
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Attorneys for Plaintiff

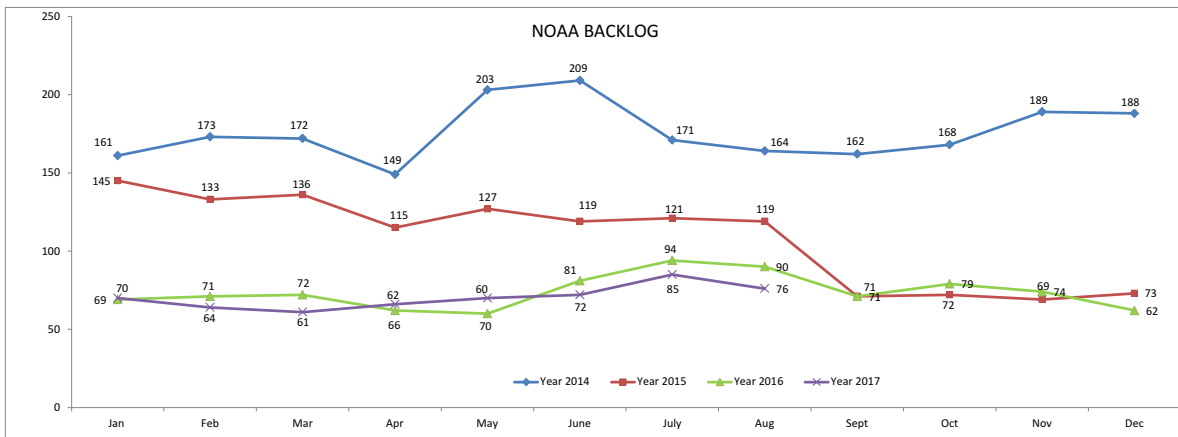
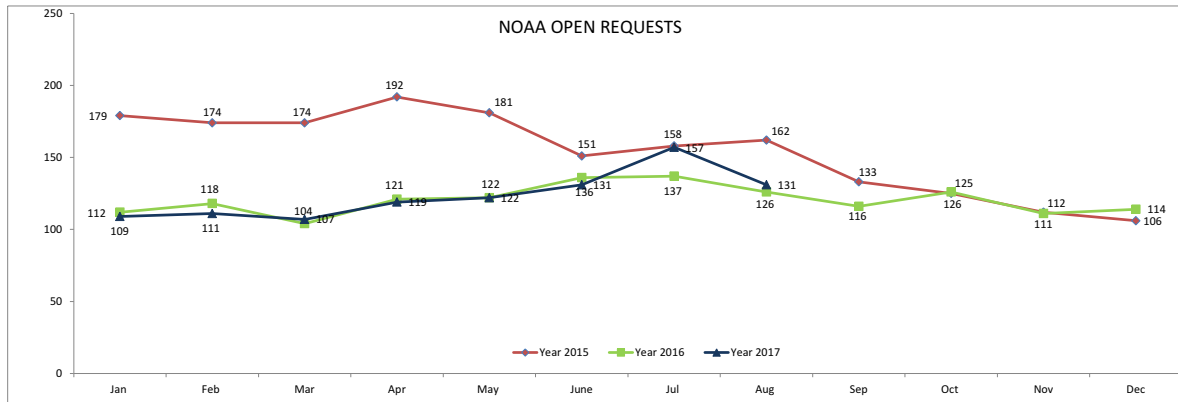
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FOIA Monthly Status Report 08-31-2017

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	10	0	7	4	0	1	3	4
CAO	1	0	0	1	1	0	0	1
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	0	0	0	0	0
CIO/FOIA	9	6	7	2	0	1	0	1
GC	2	1	0	3	2	0	0	2
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	5	3	1	7	4	0	1	5
NMFS	86	14	28	73	31	10	3	44
NOS	10	6	3	14	2	1	1	4
NWS	7	2	4	5	4	0	0	4
OAR	7	2	1	8	4	0	0	4
OMAO	1	0	1	0	0	0	0	0
OC	4	0	1	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	8	5	4	8	3	0	0	3
WFMO	4	1	3	2	0	0	0	0
NOAA Totals	157	40	60	131	55	13	8	76

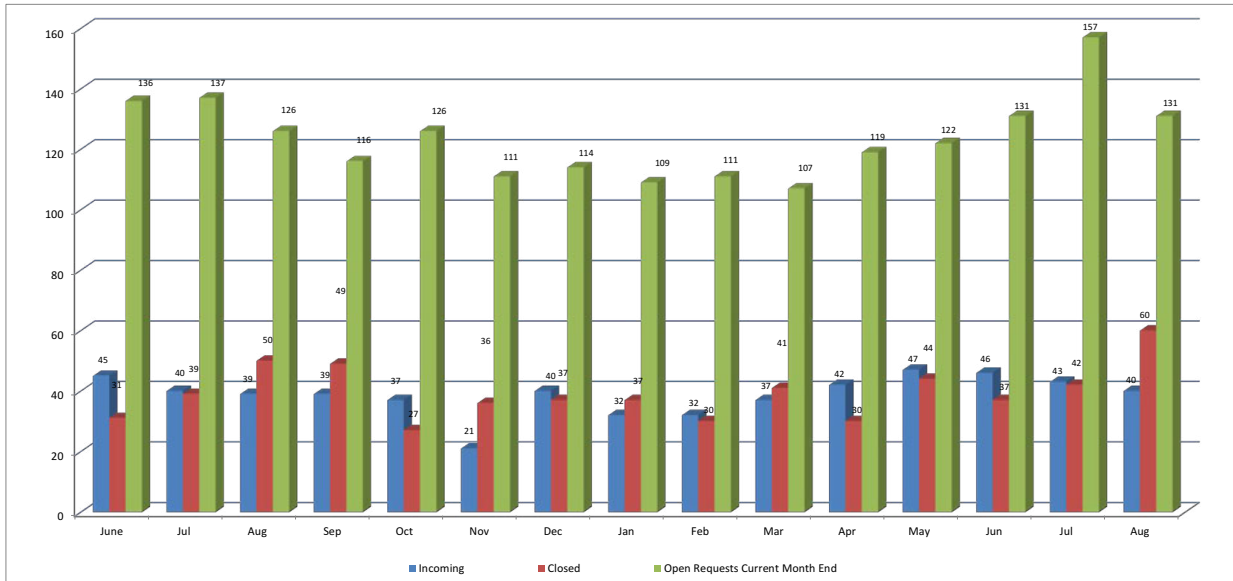


FOIA Monthly Status Report 08-31-2017

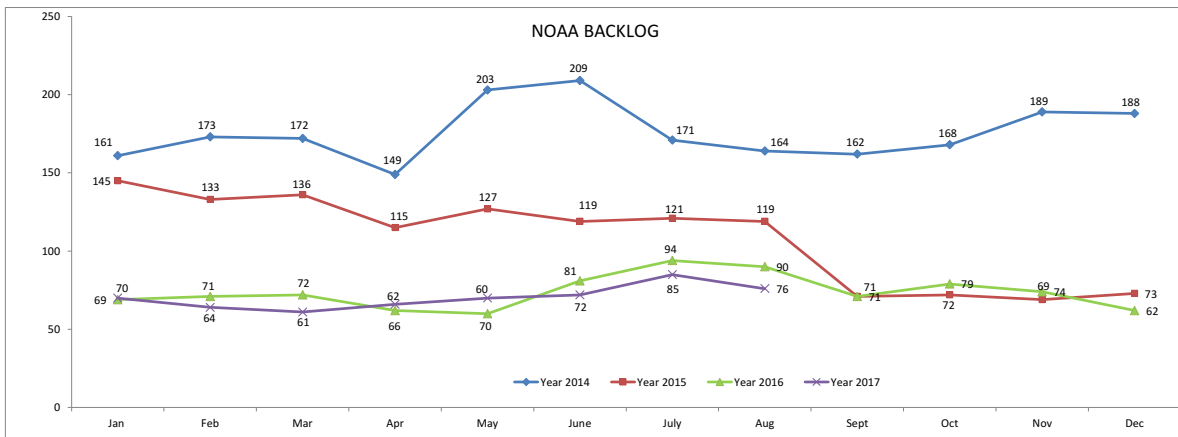
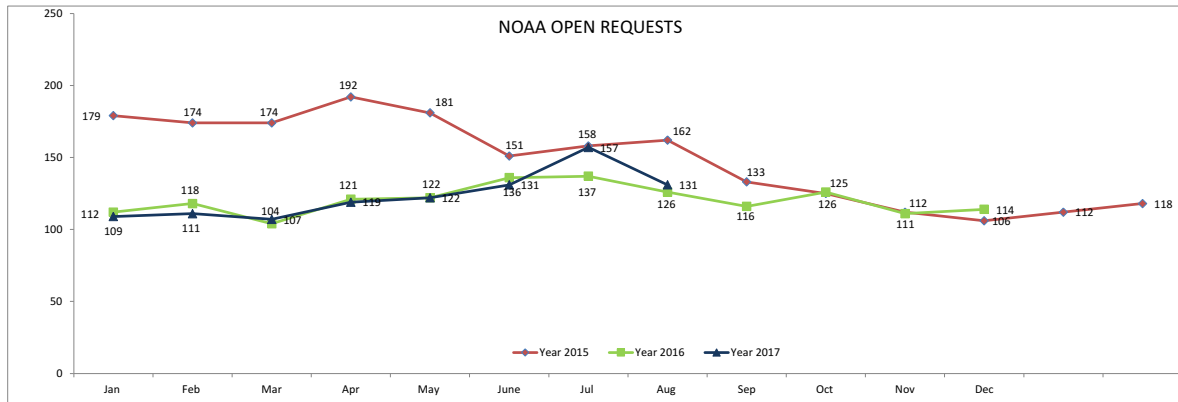


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Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	10	0	7	4	0	1	3	4
CAO	1	0	0	1	1	0	0	1
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	0	0	0	0	0
CIO/FOIA	9	6	7	2	0	1	0	1
GC	2	1	0	3	2	0	0	2
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	5	3	1	7	4	0	1	5
NMFS	86	14	28	73	31	10	3	44
NOS	10	6	3	14	2	1	1	4
NWS	7	2	4	5	4	0	0	4
OAR	7	2	1	8	4	0	0	4
OMAO	1	0	1	0	0	0	0	0
OC	4	0	1	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	8	5	4	8	3	0	0	3
WFMO	4	1	3	2	0	0	0	0
NOAA Totals	157	40	60	131	55	13	8	76



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March 30, 2017

VIA ELECTRONIC MAIL

FOIA Officer
Public Reference Facility (SOU1000)
1305 East-West Highway, Room 9719 (SSMC3)
Silver Spring, MD 20910
FOIA@noaa.gov

Re: Freedom of Information Act Request: Climate Censorship

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”), from the Center for Biological Diversity (“Center”), a non-profit organization that works to secure a future for all species hovering on the brink of extinction through science, law, and creative media, and to fulfill the continuing educational goals of its membership and the general public in the process.

REQUESTED RECORDS

The Center requests from the National Oceanic and Atmospheric Administration (“NOAA”) all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to “climate change,” “global warming,” “climate disruption,” “greenhouse gas emissions,” “emissions reductions,” and/or “Paris agreement,” and any related words or phrases.

For purposes of this request, “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind including electronic as well as paper documents, e-mails, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, data bases, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained. All of the foregoing is included in this request if it is in NOAA’s possession and control. If such records are no longer under the control of

NOAA but were at any time, please refer this request to the relevant federal agency or agencies. This request is being sent to the headquarters for NOAA with the understanding that it will be forwarded to any other agency offices where responsive records may be located.

This request is not meant to exclude any other records that, although not specially requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

If you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

In addition, if you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

The Center is willing to receive records on a rolling basis.

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, 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.”). “Readily-accessible” means text-searchable and OCR-formatted. *See* 5 U.S.C. § 552(a)(3)(B). Please provide all records in a readily-accessible, electronic .pdf format. Additionally, please provide the records either in (1) load-ready format with a CSV file index or excel spreadsheet, or if that is not possible; (2) in .pdf format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or “batched,” .pdf file. We appreciate the inclusion of an index.

RECORD DELIVERY

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in the Center taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. You may email or mail copies of the requested records to:

Margaret E. Townsend
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211
mtownsend@biologicaldiversity.org

If you find that this request is unclear, or if the responsive records are voluminous, please call me at (971) 717-6409 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as the Center access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and *non-profit public interest groups*." *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information" 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

I. The Center Qualifies for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when "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 [Federal] government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The Department of Commerce FOIA regulations at 15 C.F.R. § 4.11(l) establish the same standard.

Thus, the NOAA must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns “the operations or activities of the Federal government,” (2) whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) whether the disclosure “will contribute to public understanding” of a reasonably-broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. 40 C.F.R. § 2.107(1)(2). As shown below, the Center meets each of these factors.

A. The Subject of This Request Concerns “The Operations and Activities of the Government.”

The subject matter of this request concerns the operations and activities of the NOAA. This request asks for all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to “climate change,” “global warming,” “climate disruption,” “greenhouse gas emissions,” “emissions reductions,” and/or “Paris agreement,” and any related words or phrases.

This FOIA will provide the Center and the public with crucial insight into government activities by making public any directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases. It is clear that the NOAA’s communications policies involve a specific and identifiable activity of the government, in this case the executive branch agency, the NOAA. *Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted). Thus, the Center meets this factor.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow the Center to convey to the public information about the factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public’s understanding of government activity as it relates to the quality of the human environment. Once the information is made available, the Center will analyze it and present it to its 1.2 million members and online activists and the general public in a manner that will meaningfully enhance the public’s understanding of government activities by making public any directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases.

Thus, the requested records are likely to contribute to an understanding of NOAA operations and activities.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons' Understanding of Any Federal Directive to Remove References to "Climate Change" in Government Materials.

The requested records will contribute to public understanding of how public directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases are consistent with the goals and purposes of the agency, as well as whether they are aligned with federal environmental laws and regulations. Whether there are directives to remove references to "climate change" in government records generally, and specifically whether the NOAA has received a directive to remove references to "climate change" or ban the use of the phrase and other related phrases, are areas of interest to a reasonably-broad segment of the public. The Center will use the information it obtains from the disclosed records to educate the public at large about factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public's understanding of government activity as it relates to the quality of the human environment. *See W. Watersheds Proj. v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) ("... find[ing] that WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how ... management strategies employed by the BLM may adversely affect the environment.").

Through the Center's synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained in and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep't of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (applying "public" to require a sufficient "breadth of benefit" beyond the requester's own interests); *Cnty. Legal Servs. v. Dep't of Hous. & Urban Dev.*, 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester's "work by its nature is unlikely to reach a very general audience," "there is a segment of the public that is interested in its work").

Indeed, the public does not currently have an ability to easily evaluate the requested records, which concern factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public's understanding of government activity as it relates to the quality of the human environment that are not currently in the public domain. *See Cnty. Legal Servs. v. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records "clarify important facts" about agency policy, "the CLS request would likely shed light on information that is new to the interested public."). As the Ninth Circuit observed in *McClellan Ecological*

Seepage Situation v. Carlucci, 835 F.2d 1282, 1286 (9th Cir. 1987), “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations... .”¹

Disclosure of these records is not only “likely to contribute,” but is certain to contribute, to public understanding of government activities by making public any directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public’s understanding of government activity as it relates to the quality of the human environment.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Center is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public’s understanding of government activities by making public any directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases, as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested records will help reveal the factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public’s understanding of government activity as it relates to the quality of the human environment.

The records are also certain to shed light on NOAA’s compliance with its own purpose and goals, as well as federal environmental laws and regulations. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, the Center meets this factor as well.

II. The Center has a Demonstrated Ability to Disseminate the Requested Information Broadly.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. The Center has been

¹ In this connection, it is immaterial whether any portion of the Center’s request may currently be in the public domain because the Center requests considerably more than any piece of information that may currently be available to other individuals. *See Judicial Watch*, 326 F.3d at 1315.

substantially involved in the activities of numerous government agencies for over 25 years, and has consistently displayed its ability to disseminate information granted to it through FOIA. In consistently granting the Center's fee-waivers, agencies have recognized: (1) that the information requested by the Center contributes significantly to the public's understanding of the government's operations or activities; (2) that the information enhances the public's understanding to a greater degree than currently exists; (3) that the Center possesses the expertise to explain the requested information to the public; (4) that the Center possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes the Center as an established expert in the field of imperiled species, biodiversity, and impacts on protected species. The Center's track record of active participation in oversight of governmental activities and decision-making, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure are well established.

The Center intends to use the records requested here similarly. The Center's work appears in more than 2,500 news stories online and in print, radio and TV per month, including regular reporting in such important outlets as *The New York Times*, *Washington Post*, and *Los Angeles Times*. Many media outlets have reported on government agencies removing references to climate change from communications, utilizing information obtained by the Center from federal agencies including NOAA. In 2016, more than 2 million people visited the Center's extensive website, viewing a total of more than 5.2 million pages. The Center sends out more than 277 email newsletters and action alerts per year to more than 1.2 million members and supporters. Three times a year, the Center sends printed newsletters to more than 52,343 members. More than 199,000 people have "liked" the Center on Facebook, and there are regular postings regarding the removal of terms related to climate change from federal government materials. The Center also regularly tweets to more than 49,700 followers on Twitter. The Center intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Public oversight and enhanced understanding of the NOAA's duties is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably-broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). The Center need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch*, 326 F.3d at 1314. It is sufficient for the Center to show how it distributes information to the public generally. *Id.*

III. Obtaining the Requested Records is of No Commercial Interest to the Center.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Center's role of educating the general public. Founded in 1994, the Center is a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) with more than 1.2 million members and online activists dedicated to the protection of endangered and threatened species and wild places. The Center has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. Conclusion

For all of the foregoing reasons, the Center qualifies for a full fee-waiver. We hope that the NOAA will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

If you have any questions, please contact me at (971) 717-6409 or foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret E. Townsend". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Margaret E. Townsend
Open Government Staff Attorney
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211-0374
foia@biologicaldiversity.org

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, September 14, 2017 10:40 AM
To: Devin Brakob - NOAA Federal; Annie Thomson - NOAA Federal; Trenika Tapscott; Stephen Lipps - NOAA Federal; John Almeida - NOAA Federal; Holmes, Colin; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal; Jeff Dillen - NOAA Federal; Kristen Gustafson - NOAA Federal; Stephanie Altman - NOAA Federal; Jackie Rolleri - NOAA Federal; Kimberly Katzenbarger - NOAA FEDERAL; Mike Devany - NOAA Federal; Kelly Quickle - NOAA Federal; Kelly Turner - NOAA Federal; Zachary Goldstein - NOAA Federal; Althea Lee - NOAA Federal; Denise Hamilton - NOAA Federal; Elizabeth McLanahan - NOAA Federal; Jerome McNamara - NOAA Federal; Karen Robin - NOAA Federal; Lesa Jeanpierre - NOAA Federal; Nkolika Ndubisi - NOAA Federal; NMFS FOIA1 - NOAA Service Account; OMAO FOIA; Tejuana Michael - NOAA Federal; James Crocker - NOAA Federal; Beverly Hernandez - NOAA Affiliate; Mary Ann Whitmeyer - NOAA Federal; Shem Yusuf - NOAA Federal; _NOAA Assistant CIOs; Gregory Raymond - NOAA Federal; Kathryn Kempton - NOAA Federal; James LeDuc - NOAA Federal; Velna Bullock - NOAA Federal; Lanetta Gray - NOAA Federal; Corinne Brown - NOAA Federal; Lisa Love - NOAA Federal; Karla Burch-White - NOAA Affiliate; Maria Williams - NOAA Federal; Douglas Perry - NOAA Federal; Bruce Gibbs - NOAA Federal; Roxie Allison-Holman - NOAA Federal; Lindsey Averill - NOAA Affiliate; Steven Goodman - NOAA Federal; Benjamin Friedman - NOAA Federal; Cc: OCIO/OPPA; Robert Hogan; Symone Stone - NOAA Affiliate; _DUS Staff
Cc: Mark Graff - NOAA Federal; Dennis Morgan - NOAA Federal; Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate; Rodney Vieira - NOAA Federal; Jolie Harrison - NOAA Federal; Bogomolny, Michael (Federal); Ruth Ann Lowery - NOAA Federal; Stefan Leeb - NOAA Federal; David Bedell - NOAA Federal; Darone Jones - NOAA Federal; Debi Kessler-Smith - NOAA Federal
Subject: August Monthly FOIA Report
Attachments: FOIA Monthly Status Report 08-31-2017.pdf; FOIA Monthly Status Report 08-31-2017.xlsx; CBD Amended Complaint.pdf; CBD Original Request.pdf

Good Morning,

The August 2017 Monthly FOIA Report is attached.

Several highlights from the report include:

- The backlog dipped last month, dropping by 11% to 76 backlogged requests. What is more significant, is that the backlog dropped despite an open request tally of 157 at the end of July--the largest open request tally since August of 2015. This drop in the backlog last month is due to the tremendous closure efforts of the staff and line offices, closing 60 requests in a single month. That is the highest monthly closure rate since September 2015, when NOAA first cleared its FOIA backlog down to the current steady-state level. This shows the resourcefulness and commitment of the FOIA professionals in the Staff and Line Offices.
- The open request tally remains elevated, at 131 requests, and so in order to avoid an increase in the backlog, closures will need to stay high. This last month will establish the snapshot-in-time Fiscal Year metrics reported to DOC, which in turn are reported to DOJ, and finally to Congress. NMFS in particular has made a large push towards backlog closures, and is closing requests at a rate nearly 4 times the next highest Office closure rate. This is the time to lean forward, finishing strong, and reaffirming NOAA's commitment to transparency.

In litigation, NOAA was sued by the Center for Biological Diversity, who had submitted a FOIA request seeking directives to stop using

words regarding climate change, and to remove similar information from NOAA websites. NOAA had replied with a "no records" response, and that response was affirmed on administrative appeal to DOC. DOC and NOAA were not parties until the amended complaint was filed. An answer to the original complaint was filed before DOC and NOAA became parties. An answer to the amended complaint is due September 28. The original request, (DOC-NOAA-2017-001066) as well as a copy of the Amended Complaint, are attached.

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

CENTER FOR BIOLOGICAL DIVERSITY
378 North Main Avenue
Tucson, AZ 85701,

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR
1849 C Street, NW
Washington, D.C. 20240,

U.S. ENVIRONMENTAL PROTECTION
AGENCY
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460,

U.S. DEPARTMENT OF ENERGY
1000 Independence Avenue, SW
Washington, D.C. 20585,

U.S. DEPARTMENT OF STATE
2201 C. Street, NW
Washington, D.C. 20037,

U.S. DEPARTMENT OF COMMERCE
1401 Constitution Avenue, NW
Washington, D.C. 20230,

and

U.S. NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
1315 East-West Highway
Silver Spring, MD 20910

Defendants.

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Case No.: 1:17-cv-0974 (KBJ)

INTRODUCTION

1. The Center for Biological Diversity (“Center”)—an environmental conservation organization that works to protect native wildlife species and their habitats—challenges the failure of the U.S. Department of Interior, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of State, U.S. Department of Commerce, and U.S. National Oceanic and Atmospheric Administration to provide records concerning the Trump administration’s censorship of these federal departments’ and their component agencies’ discussion or dissemination of information about climate change, in violation of the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA” or “Act”), or alternatively, the Administrative Procedure Act, 5 U.S.C. §§ 701-06 (“APA”).

2. From January through March 2017, news outlets reported that the Trump administration directed numerous federal departments and agencies to remove information from their websites about climate change and/or to cease use of phrases such as “climate change,” “emissions reduction,” or “Paris agreement” in agency documents. These departments and agencies include the six named defendants in this action.

3. To understand these actions, the Center filed FOIA requests with each of the defendants, seeking directives or communications barring or removing climate change-related words or phrases from formal communications as well as the information, such as webpages about climate change, that has been removed from public view.

4. However, although each defendant acknowledged the Center’s request, none have provided any responsive records or stated when they might do so.

5. Defendants are unlawfully withholding the records by failing to search for and provide all responsive records to the Center. The defendants’ failure to comply with FOIA by

releasing all records related to the censorship of climate change-related words and phrases is contrary to FOIA and undermines FOIA's policy of government transparency.

6. Because prompt access to these records is necessary to effectuate FOIA's purpose, the Center seeks declaratory relief establishing that defendants are in violation of FOIA, or alternatively, the APA. The Center also seeks injunctive relief directing defendants to provide responsive records without any further delay.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

8. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district, because a portion of the responsive records may be found in this district.

9. Declaratory relief is appropriate under 28 U.S.C. § 2201.

10. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit conservation organization with offices throughout the United States. The Center has more than 58,000 members. The Center and its members are harmed by EPA's violations of FOIA, or alternatively the APA, as such violations preclude the Center from gaining a full understanding of the circumstances, rationales, and individuals involved in the Trump administration's censorship of climate change-related information.

12. Defendant U.S. DEPARTMENT OF THE INTERIOR (“Interior Department”) is an independent agency of the executive branch of the U.S. government. The Interior Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13. Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY (“EPA”) is an independent agency of the executive branch of the U.S. government. EPA is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

14. Defendant U.S. DEPARTMENT OF ENERGY (“Energy Department”) is an independent agency of the executive branch of the U.S. government. The Energy Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

15. Defendant U.S. DEPARTMENT OF STATE (“State Department”) is an independent agency of the executive branch of the U.S. government. The State Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

16. Defendant U.S. DEPARTMENT OF COMMERCE (“Commerce Department”) is an independent agency of the executive branch of the U.S. government. The Commerce Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

17. Defendant U.S. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (“NOAA”) is an independent agency of the executive branch of the U.S.

government. NOAA is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

STATUTORY BACKGROUND

18. FOIA's basic purpose is government transparency. It establishes the public's right to access all federal agency records unless such records may be withheld pursuant to one of nine, narrowly construed FOIA exemptions. 5 U.S.C. § 552(b)(1)-(9).

19. FOIA imposes strict and rigorous deadlines on federal agencies when they receive a request for records pursuant to FOIA. Specifically, an agency must determine whether to disclose responsive records and notify the requester of its determination within 20 working days of receiving a FOIA request, and it must make records "promptly" available unless it can establish that certain unusual circumstances are present and/or that it may lawfully withhold records, or portions thereof, from disclosure. *Id.* § 552(a)(3)(A), (a)(6). Also within 20 working days, the agency must inform the requester that it has a right to appeal the agency's determination. *Id.* § 552(a)(6)(A)(i).

20. FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

21. Congress has specified limited circumstances in which federal agencies may obtain more time to make the determination that is required by 5 U.S.C. § 552(a)(6)(A)(i).

22. First, an agency may toll the 20-working-day deadline to seek additional information or clarification from a requester, but that tolling period ends when the agency receives such information or clarification. *Id.* § 552(a)(6)(A)(ii).

23. Second, an agency may extend the 20-working-day deadline for an additional 10 working days by giving a written notice to the requester that sets forth "unusual circumstances"

to justify a deadline extension which also requires that it provide the date by which the agency expects to make the determination. *Id.* § 552(a)(6)(B)(i). However, to invoke such “unusual circumstances,” the agency must provide the requester with “an opportunity to limit the scope of the request so that it may be processed within [20 working days] or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii). In addition, when asserting unusual circumstances, the agency “shall make available its FOIA Public Liaison” to “assist in the resolution of any disputes between the requester and the agency.” *Id.*

24. FOIA requires each agency to make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records that are responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D).

25. FOIA requires federal agencies to expeditiously disclose requested records, *see id.* § 552, and mandates a policy of broad disclosure of government records. Any inquiry under FOIA brings with it a strong presumption in favor of disclosure.

26. Congress recognized that in certain, limited instances, records may be withheld as exempt from FOIA’s broad disclosure mandate, and thus created nine categories of exemptions. *Id.* § 552(b). These exemptions, however, are narrowly construed in light of FOIA’s dominant objective of disclosure, not secrecy.

27. The U.S. district courts have jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

28. Alternatively, an agency’s response to a FOIA request and/or a FOIA appeal is subject to judicial review under the APA, which confers a right of judicial review on any person

who is adversely affected by agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is unlawfully withheld or unreasonably delayed. *Id.* § 706(1). District courts must set aside any agency action that is found to be “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” *Id.* § 706(2)(A).

FACTUAL BACKGROUND

Interior Department FOIA Request (OS-2017-00384)

29. On March 30, 2017, the Center submitted a FOIA request to the Interior Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

30. The same day, the Interior Department acknowledged the Center’s request and assigned it tracking number OS-2017-00384 (“Interior Department FOIA Request”).

31. A determination on the Center’s FOIA request to the Interior Department was due by April 27, 2017, which is 20 working days after the date of the Interior Department’s acknowledgement of the request.

32. As of the date of the filing of this amended complaint, which is 77 working days past the 20-working-day deadline, the Interior Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center’s FOIA request.

EPA FOIA Request (EPA-HQ-2017-005517)

33. On March 30, 2017, the Center submitted a FOIA request to the EPA, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

34. The same day, the EPA acknowledged the Center’s request and assigned it tracking number EPA-HQ-2017-005517 (“EPA FOIA Request”). On March 12, 2017, EPA granted a waiver of fees in connection with the request.

35. A determination on the Center’s FOIA request to the EPA was due by April 27, 2017, which is 20 working days after the date of the EPA’s acknowledgement of the request.

36. After receiving no further communications from EPA regarding this request, by letter dated May 8, 2017, the Center informed EPA that its determination was overdue and offered to assist EPA in making a determination on the Center’s EPA FOIA Request. The Center also requested an estimate for when EPA would make a determination on the Center’s FOIA request.

37. As of the date of the filing of this amended complaint, which is 77 working days past the 20-working-day deadline, EPA has not responded to the Center’s May 8, 2017 letter, requested additional time to respond to the Center’s FOIA request, provided any responsive records, made a determination, or provided an estimated date of completion of the Center’s FOIA request.

Energy Department FOIA Request (HQ-2017-00806)

38. On March 30, 2017, the Center submitted a FOIA request to the Energy Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

39. The next day, on March 31, 2017, the Energy Department acknowledged the Center’s request and assigned it tracking number HQ-2017-00806 (“Energy Department FOIA Request”).

40. On April 11, 2017, a representative of the Energy Department, Ms. Natalie Anderson, contacted Ms. Margaret E. Townsend of the Center for Biological Diversity by phone and email. Ms. Anderson stated that she wanted to clarify the timeframe for records that are responsive to the Center’s Energy Department FOIA Request. In response, Ms. Townsend informed Ms. Anderson that the Energy Department could search for and provide all responsive records that were generated on or after November 9, 2016.

41. Ms. Anderson also stated that the Energy Department had received many FOIA requests that are similar to the Center’s Energy Department FOIA Request, and in an email dated April 11, 2017, suggested that if the Center would agree to limit the department’s search to two of its program offices—specifically, the Office of International Affairs (“OIA”) and the Office of Energy Policy and Systems Analysis (“EPSA”)—this “should allow [the Energy Department] to

provide a response more quickly.” Accordingly, the Center agreed to limit the department’s search to the OIA and EPSA.

42. Also in her April 11, 2017 email, Ms. Anderson asked if the Center would agree to eliminate the phrases “including but not limited to” and “any related words or phrases” from its request, and if the Center would like to include any search terms in addition to “climate change,” “global warming,” “climate disruption,” “greenhouse gas emissions,” “emissions reductions,” and/or “Paris agreement.” In response, Ms. Townsend added the terms “climate” and “fossil fuels” to the search terms to be used by the Energy Department during its search for responsive records from the OIA and EPSA.

43. By email dated April 13, 2017, Ms. Anderson confirmed the scope of the department’s search for responsive records, stating that the department would “move forward with processing.”

44. By letter dated April 26, 2017, Energy Department FOIA Officer Alexander C. Morris confirmed the agreement of Ms. Anderson and Ms. Townsend regarding the scope of the department’s search, informed the Center that the request was assigned to OIA and EPSA, and granting the Center’s request for a waiver of fees.

45. A determination on the Center’s Energy Department FOIA Request was due on May 11, 2017, which is 20 working days after the date of Ms. Anderson’s email stating that the department was prepared to “move forward with processing.”

46. By letter dated August 11, 2017, which was 65 working days past the 20-working-day deadline, the Energy Department provided a determination in response to the Center’s FOIA request.

47. In its determination, the Energy Department stated that it possessed no responsive records.

48. News articles indicate that the Energy Department likely possesses responsive records. For example, in an article date March 29, 2017, *Politico* reported that “[a] supervisor at the Energy Department’s international climate office told staff this week not to use the phrases ‘climate change,’ ‘emissions reduction’ or ‘Paris Agreement’ in written memos, briefings or other written communication” See Eric Wolff, Energy Department climate office bans use of phrase “climate change”, *Politico* (Mar. 29, 2017), <http://www.politico.com/story/2017/03/energy-department-climate-change-phrases-banned-236655>.

49. The Center challenges the adequacy of the Energy Department’s search for responsive records and the Energy Department’s failure to provide all responsive records to the Center.

State Department FOIA Request

50. On April 3, 2017, the Center submitted a FOIA request to the State Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

51. The next day, on April 4, 2017, the State Department acknowledged the Center’s request and assigned it tracking number F-2017-08517 (“State Department FOIA Request”).

52. By form letter dated April 10, 2017, the Requester Communications Branch of the State Department's Office of Information Programs & Services re-acknowledged receipt of the Center's FOIA request, and it also granted a public interest waiver of fees that are incurred in processing the request.

53. After receiving no further communications from the State Department regarding this request, by letter dated May 31, 2017, the Center informed the State Department that its determination was overdue and offered to assist the State Department in making a determination on the Center's State Department FOIA Request. The Center also requested an estimate for when the State Department would make a determination on the Center's FOIA request.

54. By email dated June 1, 2017, Charlotte W. Duckett confirmed the State Department's receipt of the Center's May 31, 2017 communication. Ms. Duckett stated that a copy of the Center's May 31, 2017 communication "was forwarded to the office that is processing your request" and that "our office has a requested an estimated completion date for your request." Ms. Duckett did not provide an estimated date of completion of the State Department's determination on the Center's request.

55. A determination on the Center's FOIA request to the State Department was due by May 2, 2017, which is 20 working days after the date of the State Department's acknowledgement of the request.

56. As of the date of the filing of this amended complaint, which is 74 working days past the 20-working-day deadline, the State Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center's FOIA request.

Commerce Department FOIA Request (DOC-OS-2017-000939)

57. On April 3, 2017, the Center submitted a FOIA request to the Commerce Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

58. The same day, the Commerce Department acknowledged the Center’s request and assigned it tracking number DOC-OS-2017-000939 (“Commerce Department FOIA Request”). On April 10, 2017, the Commerce Department granted a waiver of fees in connection with the request.

59. On April 13, 2017, the Commerce Department sent a letter to the Center requesting clarification of (1) the time frame of the records request and (2) the type of records requested.

60. The Center provided the requested clarification to the Commerce Department via electronic mail on April 17, 2017. The Center informed the Commerce Department that “[t]he timeframe of the records request is November 9, 2016 to the date of the search,” and that

[t]he type of records requested is all records, as defined by FOIA, and included in the following paragraph from our request:

For purposes of this request, “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind including electronic as well as paper documents, e-mails, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, data bases, drawings, surveys, graphs, charts,

photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

61. On May 23, 2017, Commerce Department FOIA Specialist Ms. Ayana Crawford called Ms. Townsend to ask if the Center would respond to the agency's request for clarification before Ms. Crawford took action to close the request. Ms. Townsend informed Ms. Crawford that the Center had already provided the requested clarification on April 17, 2017. Ms. Crawford asked Ms. Townsend to resend it. Ms. Townsend resent the email clarification the same day.

62. A determination on the Center's Commerce Department FOIA Request was due on May 3, 2017, which is 20 working days after the Commerce Department received the Center's FOIA request.

63. Even if the Commerce Department had reasonably suspended its timeline for a determination on the Center's FOIA request, by relying on May 23, 2017 as the date that the Center provided clarification, then the Center's Commerce Department FOIA Request would have been due on June 9, 2017.

64. As of the date of the filing of this Amended complaint, which is 47 workdays past the June 9, 2017 deadline, the Commerce Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center's Commerce Department FOIA request.

NOAA FOIA Request (DOC-NOAA-2017-001066)

65. On April 21, 2017, the Center submitted a FOIA request to NOAA, requesting "all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-

related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

66. The same day, NOAA acknowledged the Center’s request and assigned it tracking number DOC-NOAA-2017-001066 (“NOAA FOIA Request”). On April 24, 2014, NOAA provided a formal acknowledgement letter to the Center.

67. On May 3, 2017, NOAA informed the Center that it determined that a waiver of fees in connection with the request was not applicable as the request was “not billable.”

68. On May 10, 2017, NOAA provided a final “no records” determination to the Center and informed the Center of its right to appeal the determination.

69. The Center appealed NOAA’s “no records” determination on June 30, 2017. The same day, NOAA acknowledged the Center’s appeal and assigned it tracking number DOC-OS-2017-001456 (“NOAA FOIA Appeal”)

70. NOAA affirmed its decision on the Center’s NOAA FOIA Appeal on July 3, 2017. In the letter, the agency informed the Center that “[r]ecords indicate that a search was tasked to the NOAA National Environmental Satellite Data and Information Services (NESDIS) and that a search of the NESDIS correspondence unit was performed.” NOAA stated that “it is reasonable to assume that the NESDIS correspondence unit would hold any and all documents responsive to [the Center’s] request.” NOAA also informed the Center that it has “the right to obtain judicial review as provided for in 5 U.S.C. § 552(a)(4)(8).”

71. News articles indicate that NOAA possesses responsive records. For example, in an article date July 13, 2017, the *New York Times* reported that phrasing in a NOAA news release accompanying a report about the warming ability of global emissions of greenhouse

gases omitted any link of “human activity” to emissions. *See* Lisa Friedman, Climate-Altering Gases Spiked in 2016, Federal Scientists Report, NY Times (July 13, 2017), <https://www.nytimes.com/2017/07/13/climate/greenhouse-gases-spike-noaa-global-warming.html>.

72. The Center challenges the adequacy of NOAA’s search for responsive records and NOAA’s failure to provide all responsive records to the Center.

All Requests

73. None of FOIA’s nine exemptions to the statute’s disclosure mandate apply to the records that are responsive to any of the Center’s FOIA requests. *Id.* § 552(b).

74. The Center has been required to expend resources to prosecute this action.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **VIOLATION OF THE FREEDOM OF INFORMATION ACT** **Failure to Comply with FOIA’s Mandatory Determination Deadline**

COUNT ONE: The Interior Department Missed FOIA’s Mandatory Determination Deadline for the Center’s Interior Department FOIA Request Number OS-2017-00384

75. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

76. The Interior Department has violated FOIA by refusing to disclose records that are responsive to the Center’s Interior Department FOIA Request Number OS-2017-00384.

77. The Center has a statutory right to a final determination from the Interior Department on FOIA Request Number OS-2017-00384 in a manner that complies with FOIA. The Interior Department has violated the Center’s rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

78. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

79. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's disclosure provisions as it has in this case.

80. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, the Interior Department will continue to violate Plaintiff's rights to receive public records under FOIA.

COUNT TWO: EPA Missed FOIA's Mandatory Determination Deadline for the Center's EPA FOIA Request Number EPA-HQ-2017-005517

81. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

82. EPA has violated FOIA by refusing to disclose records that are responsive to the Center's EPA FOIA Request Number EPA-HQ-2017-005517.

83. The Center has a statutory right to a final determination from EPA on its EPA FOIA Request Number EPA-HQ-2017-005517 in a manner that complies with FOIA. EPA has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

84. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's decision deadlines as it has in this case.

85. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Missed FOIA's Mandatory Determination Deadline for the Center's Energy Department FOIA Request Number EPA-HQ-2017-005517

86. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

87. The Energy Department has violated FOIA by refusing to disclose records that are responsive to the Center's Energy Department FOIA Request Number HQ-2017-00806.

88. The Center has a statutory right to a final determination from the Energy Department on its Energy Department FOIA Request Number HQ-2017-00806 in a manner that complies with FOIA. The Energy Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

89. The Center's organizational activities will be adversely affected if the Energy Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

90. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Missed FOIA's Mandatory Determination Deadline for the Center's State Department FOIA Request Number F-2017-08517

91. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

92. The State Department has violated FOIA by refusing to disclose records that are responsive to the Center's State Department FOIA Request Number F-2017-08517.

93. The Center has a statutory right to a final determination from the State Department on its State Department FOIA Request Number F-2017-08517 in a manner that

complies with FOIA. The State Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

94. The Center's organizational activities will be adversely affected if the State Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

95. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Missed FOIA's Mandatory Determination Deadline for the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

96. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

97. The Commerce Department has violated FOIA by refusing to disclose records that are responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939.

98. The Center has a statutory right to a final determination from the Commerce Department on its Commerce Department FOIA Request Number DOC-OS-2017-000939 in a manner that complies with FOIA. The Commerce Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

99. The Center's organizational activities will be adversely affected if the Commerce Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

100. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Disclose All Responsive Records to the Center

COUNT ONE: The Interior Department Has Unlawfully Withheld Records Responsive to Interior Department FOIA Request Number OS-2017-00384

101. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

102. The Center has a statutory right to the records it seeks, and there is no legal basis for the Interior Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

103. The Interior Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Interior Department FOIA Request Number OS-2017-00384.

104. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Interior Department in the foreseeable future.

105. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's disclosure provisions as it has in this case.

106. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Has Unlawfully Withheld Records Responsive to EPA FOIA Request Number EPA-HQ-2017-005517

107. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

108. The Center has a statutory right to the records it seeks, and there is no legal basis for EPA to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

109. EPA has violated the Center's rights in this regard by withholding records that are responsive to the Center's EPA FOIA Request Number EPA-HQ-2017-005517.

110. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to EPA in the foreseeable future.

111. The Center's organizational activities will be adversely affected if EPA continues to violate FOIA's disclosure provisions as it has in this case.

112. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Has Unlawfully Withheld Records Responsive to Energy Department FOIA Request Number HQ-2017-00806

113. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

114. The Center has a statutory right to the records it seeks, and there is no legal basis for the Energy Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

115. The Energy Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Energy Department FOIA Request Number HQ-2017-00806.

116. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Energy Department in the foreseeable future.

117. The Center's organizational activities will be adversely affected if the Energy Department continues to violate FOIA's disclosure provisions as it has in this case.

118. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Has Unlawfully Withheld Records Responsive to The State Department FOIA Request Number F-2017-08517

119. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

120. The Center has a statutory right to the records it seeks, and there is no legal basis for the State Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

121. The State Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's State Department FOIA Request Number F-2017-08517.

122. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the State Department in the foreseeable future.

123. The Center's organizational activities will be adversely affected if the State Department continues to violate FOIA's disclosure provisions as it has in this case.

124. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Has Unlawfully Withheld Records Responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

125. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

126. The Center has a statutory right to the records it seeks, and there is no legal basis for the Commerce Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

127. The Commerce Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939.

128. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Commerce Department in the foreseeable future.

129. The Center's organizational activities will be adversely affected if the Commerce Department continues to violate FOIA's disclosure provisions as it has in this case.

130. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's Commerce Department FOIA Request Number DOC-NOAA-2017-001066

131. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

132. The Center has a statutory right to the records it seeks, and there is no legal basis for NOAA to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

133. NOAA has violated the Center's rights in this regard by withholding records that are responsive to the Center's NOAA FOIA Request Number DOC- NOAA-2017-001066.

134. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to NOAA in the foreseeable future.

135. The Center's organizational activities will be adversely affected if NOAA continues to violate FOIA's disclosure provisions as it has in this case.

136. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Conduct an Adequate Search for Responsive Records

COUNT ONE: The Interior Department Has Failed to Conduct an Adequate Search for All Records Responsive to Interior Department FOIA Request Number OS-2017-00384

137. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

138. The Center has a statutory right to have the Interior Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Interior Department

violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384.

139. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

140. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

141. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Has Failed to Conduct an Adequate Search for All Records Responsive to EPA FOIA Request Number EPA-HQ-2017-005517

142. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

143. The Center has a statutory right to have EPA process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). EPA violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517.

144. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

145. The Center's organizational activities will be adversely affected if EPA continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

146. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Has Failed to Conduct an Adequate Search for All Records Responsive to Energy Department FOIA Request Number HQ-2017-00806

147. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

148. The Center has a statutory right to have the Energy Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Energy Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number HQ-2017-00806.

149. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Energy Department in the foreseeable future.

150. The Center's organizational activities will be adversely affected if the Energy Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

151. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Has Failed to Conduct an Adequate Search for All Records Responsive to State Department FOIA Request Number F-2017-08517

152. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

153. The Center has a statutory right to have the State Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The State Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517.

154. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the State Department in the foreseeable future.

155. The Center's organizational activities will be adversely affected if the State Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

156. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

157. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

158. The Center has a statutory right to have the Commerce Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Commerce

Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939.

159. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Commerce Department in the foreseeable future.

160. The Center's organizational activities will be adversely affected if the Commerce Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

161. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's NOAA FOIA Request Number DOC-NOAA-2017-001066

162. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

163. The Center has a statutory right to have NOAA process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). NOAA violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066.

164. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to NOAA in the foreseeable future.

165. The Center's organizational activities will be adversely affected if NOAA continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

166. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

FOURTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records

COUNT ONE: The Interior Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

167. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

168. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

169. The Interior Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Interior Department FOIA Request Number OS-2017-00384.

170. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

171. The Center's organizational activities will be adversely affected if the Interior Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

172. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

173. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

174. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

175. EPA violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517.

176. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

177. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's disclosure provisions as it has in this case.

178. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

179. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

180. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

181. The Energy Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Energy Department FOIA Request Number HQ-2017-00806.

182. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Energy Department in the foreseeable future.

183. The Center's organizational activities will be adversely affected if the Energy Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

184. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

185. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

186. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

187. The State Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to State Department FOIA Request Number F-2017-08517.

188. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the State Department in the foreseeable future.

189. The Center's organizational activities will be adversely affected if the State Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

190. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

191. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

192. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

193. The Commerce Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939.

194. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Commerce Department in the foreseeable future.

195. The Center's organizational activities will be adversely affected if the Commerce Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

196. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

197. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

198. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

199. NOAA violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066.

200. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to NOAA in the foreseeable future.

201. The Center's organizational activities will be adversely affected if NOAA is allowed to continue violating FOIA's disclosure provisions as it has in this case.

202. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Fourth Claims)
Unlawfully Withheld or Unreasonably Delayed Actions that FOIA Requires

COUNT ONE: The Interior Department Withheld or Unreasonably Delayed Actions that FOIA Requires

203. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

204. The Interior Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose

records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (2) make a timely and lawful determination on Interior Department FOIA Request Number OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all responsive records to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to Interior Department FOIA Request Number OS-2017-00384 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Interior Department FOIA Request Number OS-2017-00384 in the event that records may be subject to an exemption. The Interior Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

205. Alternatively, the Interior Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (2) make a timely and lawful determination on to Interior Department FOIA Request Number OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to OS-2017-00384 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Interior Department FOIA Request Number OS-2017-00384 which contain any material that may be lawfully withheld under an exemption(s). The Interior Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

206. As alleged above, the Interior Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

207. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

208. The Center has no other adequate remedy at law to redress the violations noted above.

209. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT TWO: EPA Withheld or Unreasonably Delayed Actions that FOIA Requires

210. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

211. EPA unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all responsive records to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to EPA FOIA Request Number EPA-HQ-2017-005517 in the event that records may be subject to an exemption. EPA's failures constitute agency actions that are

unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

212. Alternatively, EPA unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which contain any material that may be lawfully withheld under an exemption(s). EPA's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

213. As alleged above, EPA's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

214. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, EPA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

215. The Center has no other adequate remedy at law to redress the violations noted above.

216. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT THREE: The Energy Department Withheld or Unreasonably Delayed Actions that FOIA Requires

217. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

218. The Energy Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all responsive records to Energy Department FOIA Request Number HQ-2017-00806; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Energy Department FOIA Request Number HQ-2017-00806 in the event that records may be subject to an exemption. The Energy Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

219. Alternatively, the Energy Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions

to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Energy Department FOIA Request Number HQ-2017-00806 which contain any material that may be lawfully withheld under an exemption(s). The Energy Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

220. As alleged above, the Energy Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

221. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, the Energy Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

222. The Center has no other adequate remedy at law to redress the violations noted above.

223. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FOUR: The State Department Withheld or Unreasonably Delayed Actions that FOIA Requires

224. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

225. The State Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to State Department FOIA Request Number F-2017-08517; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all responsive records to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are

responsive to State Department FOIA Request Number F-2017-08517 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to State Department FOIA Request Number F-2017-08517 in the event that records may be subject to an exemption. The State Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

226. Alternatively, the State Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to F-2017-085177; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are responsive to State Department FOIA Request Number F-2017-08517 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to State Department FOIA Request Number F-2017-08517 which contain any material that may be lawfully withheld under an exemption(s). The State Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

227. As alleged above, the State Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

228. The Center has suffered a legal wrong as a result of the State Department's failure to comply with the mandates of FOIA. As alleged above, the State Department violated its

statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

229. The Center has no other adequate remedy at law to redress the violations noted above.

230. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FIVE: The Commerce Department Withheld or Unreasonably Delayed Actions that FOIA Requires

231. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

232. The Commerce Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all responsive records to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Commerce Department FOIA Request Number DOC-OS-2017-000939 in the event that records may be subject to an exemption. The Commerce Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

233. Alternatively, the Commerce Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search

for and disclose records that are responsive to DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which contain any material that may be lawfully withheld under an exemption(s). The Commerce Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

234. As alleged above, the Commerce Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

235. The Center has suffered a legal wrong as a result of the Commerce Department's failure to comply with the mandates of FOIA. As alleged above, the Commerce Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

236. The Center has no other adequate remedy at law to redress the violations noted above.

237. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT SIX: NOAA Withheld or Unreasonably Delayed Actions that FOIA Requires

238. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

239. NOAA unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). NOAA's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

240. Alternatively, NOAA unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). NOAA's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

241. As alleged above, NOAA's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

242. The Center has suffered a legal wrong as a result of NOAA's failure to comply with the mandates of FOIA. As alleged above, NOAA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

243. The Center has no other adequate remedy at law to redress the violations noted above.

244. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

SIXTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Eighth Claims)
Violations of FOIA's Requirements Are Arbitrary, Capricious,
an Abuse of Discretion, or Otherwise Not in Accordance with Law

COUNT ONE: The Interior Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

245. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

246. The Interior Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to OS-2017-00384; (2) make a timely and lawful determination on OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to Interior Department FOIA Request Number OS-2017-00384 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Interior Department FOIA Request

Number OS-2017-00384 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Interior Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

247. As alleged above, the Interior Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

248. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

249. The Center has no other adequate remedy at law to redress the violations noted above.

250. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT TWO: EPA's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

251. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

252. EPA violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which may

not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, EPA's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

253. As alleged above, EPA's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

254. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, EPA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

255. The Center has no other adequate remedy at law to redress the violations noted above.

256. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT THREE: The Energy Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

257. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

258. The Energy Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number

HQ-2017-00806s; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Energy Department FOIA Request Number HQ-2017-00806 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Energy Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

259. As alleged above, the Energy Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

260. The Center has suffered a legal wrong as a result of the Energy Department's failure to comply with the mandates of FOIA. As alleged above, the Energy Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

261. The Center has no other adequate remedy at law to redress the violations noted above.

262. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FOUR: The State Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

263. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

264. The State Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to State Department FOIA

Request Number F-2017-08517; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are responsive to State Department FOIA Request Number F-2017-08517 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to State Department FOIA Request Number F-2017-08517 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the State Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

265. As alleged above, the State Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

266. The Center has suffered a legal wrong as a result of the State Department's failure to comply with the mandates of FOIA. As alleged above, the State Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

267. The Center has no other adequate remedy at law to redress the violations noted above.

268. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FIVE: The Commerce Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

269. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

270. The Commerce Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number DOC-OS-2017-000939; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Commerce Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

271. As alleged above, the Commerce Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

272. The Center has suffered a legal wrong as a result of the Commerce Department's failure to comply with the mandates of FOIA. As alleged above, the Commerce Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

273. The Center has no other adequate remedy at law to redress the violations noted above.

274. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT SIX: NOAA's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

275. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

276. NOAA violated FOIA's statutory mandates due to its failure and refusal to (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, NOAA's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

277. As alleged above, NOAA's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

278. The Center has suffered a legal wrong as a result of NOAA's failure to comply with the mandates of FOIA. As alleged above, NOAA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

279. The Center has no other adequate remedy at law to redress the violations noted above.

280. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Plaintiff's FOIA Requests, numbers OS-2017-00384, EPA-HQ-2017-005517, HQ-2017-00806, F-2017-08517, DOC-OS-2017-000939, and DOC-NOAA-2017-001066 with the cut-off date for such searches being the date the searches are conducted, and to provide Plaintiff, by a date certain, with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action.

2. Declare that Defendants' failures to timely make determinations on Plaintiff's FOIA Requests are unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i), or in the alternative, are an agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

3. Declare that Defendants' failures to properly apply FOIA exemptions, 5 U.S.C. § 552(b), are unlawful under FOIA, or in the alternative, are an agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

4. Declare that Defendants' failures to undertake a search for and disclose to Plaintiff all records that are responsive to Plaintiff's FOIA Requests, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i), or in the alternative, are an agency action that

has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

5. Declare that Defendants' failures to provide Plaintiff with reasonably segregable portions of records which may be lawfully subject to a FOIA exemption, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(7)(b), or in the alternative, are agency actions that have been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

6. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.

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

DATED: August 16, 2017

Respectfully submitted,

/s/ Margaret E. Townsend

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/s/ Amy R. Atwood

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY
378 North Main Avenue
Tucson, AZ 85701,

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR
1849 C Street, NW
Washington, D.C. 20240,

U.S. ENVIRONMENTAL PROTECTION
AGENCY
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460,

U.S. DEPARTMENT OF ENERGY
1000 Independence Avenue, SW
Washington, D.C. 20585,

U.S. DEPARTMENT OF STATE
2201 C. Street, NW
Washington, D.C. 20037,

U.S. DEPARTMENT OF COMMERCE
1401 Constitution Avenue, NW
Washington, D.C. 20230,

and

U.S. NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
1315 East-West Highway
Silver Spring, MD 20910

Defendants.

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Case No.: 1:17-cv-0974 (KBJ)

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INTRODUCTION

1. The Center for Biological Diversity (“Center”)—an environmental conservation organization that works to protect native wildlife species and their habitats—challenges the failure of the U.S. Department of Interior, U.S. Environmental Protection Agency, U.S.

Department of Energy, U.S. Department of State, U.S. Department of Commerce, and U.S.

National Oceanic and Atmospheric Administration to provide records concerning the Trump administration’s censorship of these federal departments’ and their component agencies’

discussion or dissemination of information about climate change, in violation of the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA” or “Act”), or alternatively, the Administrative Procedure Act, 5 U.S.C. §§ 701-06 (“APA”).

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2. From January through March 2017, news outlets reported that the Trump administration directed numerous federal departments and agencies to remove information from their websites about climate change and/or to cease use of phrases such as “climate change,” “emissions reduction,” or “Paris agreement” in agency documents. These departments and agencies include the six named defendants in this action.

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3. To understand these actions, the Center filed FOIA requests with each of the defendants, seeking directives or communications barring or removing climate change-related words or phrases from formal communications as well as the information, such as webpages about climate change, that has been removed from public view.

4. However, although each defendant acknowledged the Center’s request, none have provided any responsive records or stated when they might do so.

5. Defendants are unlawfully withholding the records by failing to search for and provide all responsive records to the Center. The defendants’ failure to comply with FOIA by

releasing all records related to the censorship of climate change-related words and phrases is contrary to FOIA and undermines FOIA's policy of government transparency.

6. Because prompt access to these records is necessary to effectuate FOIA's purpose, the Center seeks declaratory relief establishing that defendants are in violation of FOIA, or alternatively, the APA. The Center also seeks injunctive relief directing defendants to provide responsive records without any further delay.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

8. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district, because a portion of the responsive records may be found in this district.

9. Declaratory relief is appropriate under 28 U.S.C. § 2201.

10. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit conservation organization with offices throughout the United States. The Center has more than 58,000 members. The Center and its members are harmed by EPA's violations of FOIA, or alternatively the APA, as such violations preclude the Center from gaining a full understanding of the circumstances, rationales, and individuals involved in the Trump administration's censorship of climate change-related information.

12. Defendant U.S. DEPARTMENT OF THE INTERIOR (“Interior Department”) is an independent agency of the executive branch of the U.S. government. The Interior Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13. Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY (“EPA”) is an independent agency of the executive branch of the U.S. government. EPA is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

14. Defendant U.S. DEPARTMENT OF ENERGY (“Energy Department”) is an independent agency of the executive branch of the U.S. government. The Energy Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

15. Defendant U.S. DEPARTMENT OF STATE (“State Department”) is an independent agency of the executive branch of the U.S. government. The State Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

16. Defendant U.S. DEPARTMENT OF COMMERCE (“Commerce Department”) is an independent agency of the executive branch of the U.S. government. The Commerce Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

17. Defendant U.S. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (“NOAA”) is an independent agency of the executive branch of the U.S.

government. NOAA is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

STATUTORY BACKGROUND

18. FOIA's basic purpose is government transparency. It establishes the public's right to access all federal agency records unless such records may be withheld pursuant to one of nine, narrowly construed FOIA exemptions. 5 U.S.C. § 552(b)(1)-(9).

19. FOIA imposes strict and rigorous deadlines on federal agencies when they receive a request for records pursuant to FOIA. Specifically, an agency must determine whether to disclose responsive records and notify the requester of its determination within 20 working days of receiving a FOIA request, and it must make records "promptly" available unless it can establish that certain unusual circumstances are present and/or that it may lawfully withhold records, or portions thereof, from disclosure. *Id.* § 552(a)(3)(A), (a)(6). Also within 20 working days, the agency must inform the requester that it has a right to appeal the agency's determination. *Id.* § 552(a)(6)(A)(i).

20. FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

21. Congress has specified limited circumstances in which federal agencies may obtain more time to make the determination that is required by 5 U.S.C. § 552(a)(6)(A)(i).

22. First, an agency may toll the 20-working-day deadline to seek additional information or clarification from a requester, but that tolling period ends when the agency receives such information or clarification. *Id.* § 552(a)(6)(A)(ii).

23. Second, an agency may extend the 20-working-day deadline for an additional 10 working days by giving a written notice to the requester that sets forth "unusual circumstances"

to justify a deadline extension which also requires that it provide the date by which the agency expects to make the determination. *Id.* § 552(a)(6)(B)(i). However, to invoke such “unusual circumstances,” the agency must provide the requester with “an opportunity to limit the scope of the request so that it may be processed within [20 working days] or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii). In addition, when asserting unusual circumstances, the agency “shall make available its FOIA Public Liaison” to “assist in the resolution of any disputes between the requester and the agency.” *Id.*

24. FOIA requires each agency to make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records that are responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D).

25. FOIA requires federal agencies to expeditiously disclose requested records, *see id.* § 552, and mandates a policy of broad disclosure of government records. Any inquiry under FOIA brings with it a strong presumption in favor of disclosure.

26. Congress recognized that in certain, limited instances, records may be withheld as exempt from FOIA’s broad disclosure mandate, and thus created nine categories of exemptions. *Id.* § 552(b). These exemptions, however, are narrowly construed in light of FOIA’s dominant objective of disclosure, not secrecy.

27. The U.S. district courts have jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

28. Alternatively, an agency’s response to a FOIA request and/or a FOIA appeal is subject to judicial review under the APA, which confers a right of judicial review on any person

who is adversely affected by agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is unlawfully withheld or unreasonably delayed. *Id.* § 706(1). District courts must set aside any agency action that is found to be “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” *Id.* § 706(2)(A).

FACTUAL BACKGROUND

Interior Department FOIA Request (OS-2017-00384)

29. On March 30, 2017, the Center submitted a FOIA request to the Interior Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

30. The same day, the Interior Department acknowledged the Center’s request and assigned it tracking number OS-2017-00384 (“Interior Department FOIA Request”).

31. A determination on the Center’s FOIA request to the Interior Department was due by April 27, 2017, which is 20 working days after the date of the Interior Department’s acknowledgement of the request.

32. As of the date of the filing of this amended complaint, which is 77 working days past the 20-working-day deadline, the Interior Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center’s FOIA request.

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EPA FOIA Request (EPA-HQ-2017-005517)

33. On March 30, 2017, the Center submitted a FOIA request to the EPA, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

34. The same day, the EPA acknowledged the Center’s request and assigned it tracking number EPA-HQ-2017-005517 (“EPA FOIA Request”). On March 12, 2017, EPA granted a waiver of fees in connection with the request.

35. A determination on the Center’s FOIA request to the EPA was due by April 27, 2017, which is 20 working days after the date of the EPA’s acknowledgement of the request.

36. After receiving no further communications from EPA regarding this request, by letter dated May 8, 2017, the Center informed EPA that its determination was overdue and offered to assist EPA in making a determination on the Center’s EPA FOIA Request. The Center also requested an estimate for when EPA would make a determination on the Center’s FOIA request.

37. As of the date of the filing of this amended complaint, which is 77 working days past the 20-working-day deadline, EPA has not responded to the Center’s May 8, 2017 letter, requested additional time to respond to the Center’s FOIA request, provided any responsive records, made a determination, or provided an estimated date of completion of the Center’s FOIA request.

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Energy Department FOIA Request (HQ-2017-00806)

38. On March 30, 2017, the Center submitted a FOIA request to the Energy Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

39. The next day, on March 31, 2017, the Energy Department acknowledged the Center’s request and assigned it tracking number HQ-2017-00806 (“Energy Department FOIA Request”).

40. On April 11, 2017, a representative of the Energy Department, Ms. Natalie Anderson, contacted Ms. Margaret E. Townsend of the Center for Biological Diversity by phone and email. Ms. Anderson stated that she wanted to clarify the timeframe for records that are responsive to the Center’s Energy Department FOIA Request. In response, Ms. Townsend informed Ms. Anderson that the Energy Department could search for and provide all responsive records that were generated on or after November 9, 2016.

41. Ms. Anderson also stated that the Energy Department had received many FOIA requests that are similar to the Center’s Energy Department FOIA Request, and in an email dated April 11, 2017, suggested that if the Center would agree to limit the department’s search to two of its program offices—specifically, the Office of International Affairs (“OIA”) and the Office of Energy Policy and Systems Analysis (“EPSA”)—this “should allow [the Energy Department] to

provide a response more quickly.” Accordingly, the Center agreed to limit the department’s search to the OIA and EPSA.

42. Also in her April 11, 2017 email, Ms. Anderson asked if the Center would agree to eliminate the phrases “including but not limited to” and “any related words or phrases” from its request, and if the Center would like to include any search terms in addition to “climate change,” “global warming,” “climate disruption,” “greenhouse gas emissions,” “emissions reductions,” and/or “Paris agreement.” In response, Ms. Townsend added the terms “climate” and “fossil fuels” to the search terms to be used by the Energy Department during its search for responsive records from the OIA and EPSA.

43. By email dated April 13, 2017, Ms. Anderson confirmed the scope of the department’s search for responsive records, stating that the department would “move forward with processing.”

44. By letter dated April 26, 2017, Energy Department FOIA Officer Alexander C. Morris confirmed the agreement of Ms. Anderson and Ms. Townsend regarding the scope of the department’s search, informed the Center that the request was assigned to OIA and EPSA, and granting the Center’s request for a waiver of fees.

45. A determination on the Center’s Energy Department FOIA Request was due on May 11, 2017, which is 20 working days after the date of Ms. Anderson’s email stating that the department was prepared to “move forward with processing.”

46. ~~By letter dated August 11, 2017, which was 65 working days past the 20-~~
working-day deadline, the Energy Department provided a determination in response to the
Center’s FOIA request.

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47. In its determination, the Energy Department stated that it possessed no responsive records.

48. News articles indicate that the Energy Department likely possesses responsive records. For example, in an article date March 29, 2017, *Politico* reported that “[a] supervisor at the Energy Department’s international climate office told staff this week not to use the phrases ‘climate change,’ ‘emissions reduction’ or ‘Paris Agreement’ in written memos, briefings or other written communication” See Eric Wolff, Energy Department climate office bans use of phrase “climate change”, *Politico* (Mar. 29, 2017), <http://www.politico.com/story/2017/03/energy-department-climate-change-phrases-banned-236655>.

49. The Center challenges the adequacy of the Energy Department’s search for responsive records and the Energy Department’s failure to provide all responsive records to the Center.

State Department FOIA Request

50. On April 3, 2017, the Center submitted a FOIA request to the State Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

51. The next day, on April 4, 2017, the State Department acknowledged the Center’s request and assigned it tracking number F-2017-08517 (“State Department FOIA Request”).

52. By form letter dated April 10, 2017, the Requester Communications Branch of the State Department's Office of Information Programs & Services re-acknowledged receipt of the Center's FOIA request, and it also granted a public interest waiver of fees that are incurred in processing the request.

53. After receiving no further communications from the State Department regarding this request, by letter dated May 31, 2017, the Center informed the State Department that its determination was overdue and offered to assist the State Department in making a determination on the Center's State Department FOIA Request. The Center also requested an estimate for when the State Department would make a determination on the Center's FOIA request.

54. By email dated June 1, 2017, Charlotte W. Duckett confirmed the State Department's receipt of the Center's May 31, 2017 communication. Ms. Duckett stated that a copy of the Center's May 31, 2017 communication "was forwarded to the office that is processing your request" and that "our office has requested an estimated completion date for your request." Ms. Duckett did not provide an estimated date of completion of the State Department's determination on the Center's request.

55. A determination on the Center's FOIA request to the State Department was due by May 2, 2017, which is 20 working days after the date of the State Department's acknowledgement of the request.

56. As of the date of the filing of this amended complaint, which is 74 working days past the 20-working-day deadline, the State Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center's FOIA request.

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Commerce Department FOIA Request (DOC-OS-2017-000939)

57. On April 3, 2017, the Center submitted a FOIA request to the Commerce Department, requesting “all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

58. The same day, the Commerce Department acknowledged the Center’s request and assigned it tracking number DOC-OS-2017-000939 (“Commerce Department FOIA Request”). On April 10, 2017, the Commerce Department granted a waiver of fees in connection with the request.

59. On April 13, 2017, the Commerce Department sent a letter to the Center requesting clarification of (1) the time frame of the records request and (2) the type of records requested.

60. The Center provided the requested clarification to the Commerce Department via electronic mail on April 17, 2017. The Center informed the Commerce Department that “[t]he timeframe of the records request is November 9, 2016 to the date of the search,” and that

[t]he type of records requested is all records, as defined by FOIA, and included in the following paragraph from our request:

For purposes of this request, “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind including electronic as well as paper documents, e-mails, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, data bases, drawings, surveys, graphs, charts,

photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

61. On May 23, 2017, Commerce Department FOIA Specialist Ms. Ayana Crawford called Ms. Townsend to ask if the Center would respond to the agency's request for clarification before Ms. Crawford took action to close the request. Ms. Townsend informed Ms. Crawford that the Center had already provided the requested clarification on April 17, 2017. Ms. Crawford asked Ms. Townsend to resend it. Ms. Townsend resent the email clarification the same day.

62. A determination on the Center's Commerce Department FOIA Request was due on May 3, 2017, which is 20 working days after the Commerce Department received the Center's FOIA request.

63. Even if the Commerce Department had reasonably suspended its timeline for a determination on the Center's FOIA request, by relying on May 23, 2017 as the date that the Center provided clarification, then the Center's Commerce Department FOIA Request would have been due on June 9, 2017.

64. As of the date of the filing of this Amended complaint, which is 47 workdays past the June 9, 2017 deadline, the Commerce Department has not requested additional time to respond, provided any responsive records, or provided a determination in response to the Center's Commerce Department FOIA request.

NOAA FOIA Request (DOC-NOAA-2017-001066)

65. On April 21, 2017, the Center submitted a FOIA request to NOAA, requesting "all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-

related words or phrases, including but not limited to ‘climate change,’ ‘global warming,’ ‘climate disruption,’ ‘greenhouse gas emissions,’ ‘emissions reductions,’ and/or ‘Paris agreement,’ and any related words or phrases.”

66. The same day, NOAA acknowledged the Center’s request and assigned it tracking number DOC-NOAA-2017-001066 (“NOAA FOIA Request”). On April 24, 2014, NOAA provided a formal acknowledgement letter to the Center.

67. On May 3, 2017, NOAA informed the Center that it determined that a waiver of fees in connection with the request was not applicable as the request was “not billable.”

68. On May 10, 2017, NOAA provided a final “no records” determination to the Center and informed the Center of its right to appeal the determination.

69. The Center appealed NOAA’s “no records” determination on June 30, 2017. The same day, NOAA acknowledged the Center’s appeal and assigned it tracking number DOC-OS-2017-001456 (“NOAA FOIA Appeal”)

70. NOAA affirmed its decision on the Center’s NOAA FOIA Appeal on July 3, 2017. In the letter, the agency informed the Center that “[r]ecords indicate that a search was tasked to the NOAA National Environmental Satellite Data and Information Services (NESDIS) and that a search of the NESDIS correspondence unit was performed.” NOAA stated that “it is reasonable to assume that the NESDIS correspondence unit would hold any and all documents responsive to [the Center’s] request.” NOAA also informed the Center that it has “the right to obtain judicial review as provided for in 5 U.S.C. § 552(a)(4)(8).”

71. News articles indicate that NOAA possesses responsive records. For example, in an article date July 13, 2017, the *New York Times* reported that phrasing in a NOAA news release accompanying a report about the warming ability of global emissions of greenhouse

gases omitted any link of “human activity” to emissions. *See* Lisa Friedman, *Climate-Altering Gases Spiked in 2016, Federal Scientists Report*, NY Times (July 13, 2017), <https://www.nytimes.com/2017/07/13/climate/greenhouse-gases-spike-noaa-global-warming.html>.

72. The Center challenges the adequacy of NOAA’s search for responsive records and NOAA’s failure to provide all responsive records to the Center.

All Requests

73. None of FOIA’s nine exemptions to the statute’s disclosure mandate apply to the records that are responsive to any of the Center’s FOIA requests. *Id.* § 552(b).

74. The Center has been required to expend resources to prosecute this action.

CLAIMS FOR RELIEF

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FIRST CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Comply with FOIA’s Mandatory Determination Deadline

COUNT ONE: The Interior Department Missed FOIA’s Mandatory Determination Deadline for the Center’s Interior Department FOIA Request Number OS-2017-00384

75. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

76. The Interior Department has violated FOIA by refusing to disclose records that are responsive to the Center’s Interior Department FOIA Request Number OS-2017-00384.

77. The Center has a statutory right to a final determination from the Interior Department on FOIA Request Number OS-2017-00384 in a manner that complies with FOIA. The Interior Department has violated the Center’s rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

78. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

79. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's disclosure provisions as it has in this case.

80. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, the Interior Department will continue to violate Plaintiff's rights to receive public records under FOIA.

COUNT TWO: EPA Missed FOIA's Mandatory Determination Deadline for the Center's EPA FOIA Request Number EPA-HQ-2017-005517

81. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

82. EPA has violated FOIA by refusing to disclose records that are responsive to the Center's EPA FOIA Request Number EPA-HQ-2017-005517.

83. The Center has a statutory right to a final determination from EPA on its EPA FOIA Request Number EPA-HQ-2017-005517 in a manner that complies with FOIA. EPA has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

84. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's decision deadlines as it has in this case.

85. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Missed FOIA's Mandatory Determination Deadline for the Center's Energy Department FOIA Request Number EPA-HQ-2017-005517

86. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

87. The Energy Department has violated FOIA by refusing to disclose records that are responsive to the Center's Energy Department FOIA Request Number HQ-2017-00806.

88. The Center has a statutory right to a final determination from the Energy Department on its Energy Department FOIA Request Number HQ-2017-00806 in a manner that complies with FOIA. The Energy Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

89. The Center's organizational activities will be adversely affected if the Energy Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

90. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Missed FOIA's Mandatory Determination Deadline for the Center's State Department FOIA Request Number F-2017-08517

91. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

92. The State Department has violated FOIA by refusing to disclose records that are responsive to the Center's State Department FOIA Request Number F-2017-08517.

93. The Center has a statutory right to a final determination from the State Department on its State Department FOIA Request Number F-2017-08517 in a manner that

complies with FOIA. The State Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

94. The Center's organizational activities will be adversely affected if the State Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

95. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Missed FOIA's Mandatory Determination Deadline for the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

96. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

97. The Commerce Department has violated FOIA by refusing to disclose records that are responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939.

98. The Center has a statutory right to a final determination from the Commerce Department on its Commerce Department FOIA Request Number DOC-OS-2017-000939 in a manner that complies with FOIA. The Commerce Department has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

99. The Center's organizational activities will be adversely affected if the Commerce Department is allowed to continue violating FOIA's decision deadlines as it has in this case.

100. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Disclose All Responsive Records to the Center

COUNT ONE: The Interior Department Has Unlawfully Withheld Records Responsive to Interior Department FOIA Request Number OS-2017-00384

101. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

102. The Center has a statutory right to the records it seeks, and there is no legal basis for the Interior Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

103. The Interior Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Interior Department FOIA Request Number OS-2017-00384.

104. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Interior Department in the foreseeable future.

105. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's disclosure provisions as it has in this case.

106. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Has Unlawfully Withheld Records Responsive to EPA FOIA Request Number EPA-HQ-2017-005517

107. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

108. The Center has a statutory right to the records it seeks, and there is no legal basis for EPA to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

109. EPA has violated the Center's rights in this regard by withholding records that are responsive to the Center's EPA FOIA Request Number EPA-HQ-2017-005517.

110. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to EPA in the foreseeable future.

111. The Center's organizational activities will be adversely affected if EPA continues to violate FOIA's disclosure provisions as it has in this case.

112. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Has Unlawfully Withheld Records Responsive to Energy Department FOIA Request Number HQ-2017-00806

113. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

114. The Center has a statutory right to the records it seeks, and there is no legal basis for the Energy Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

115. The Energy Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Energy Department FOIA Request Number HQ-2017-00806.

116. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Energy Department in the foreseeable future.

117. The Center's organizational activities will be adversely affected if the Energy Department continues to violate FOIA's disclosure provisions as it has in this case.

118. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Has Unlawfully Withheld Records Responsive to The State Department FOIA Request Number F-2017-08517

119. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

120. The Center has a statutory right to the records it seeks, and there is no legal basis for the State Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

121. The State Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's State Department FOIA Request Number F-2017-08517.

122. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the State Department in the foreseeable future.

123. The Center's organizational activities will be adversely affected if the State Department continues to violate FOIA's disclosure provisions as it has in this case.

124. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Has Unlawfully Withheld Records Responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

125. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

126. The Center has a statutory right to the records it seeks, and there is no legal basis for the Commerce Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. See 5 U.S.C. § 552(b)(1)-(9).

127. The Commerce Department has violated the Center's rights in this regard by withholding records that are responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939.

128. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to the Commerce Department in the foreseeable future.

129. The Center's organizational activities will be adversely affected if the Commerce Department continues to violate FOIA's disclosure provisions as it has in this case.

130. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's Commerce Department FOIA Request Number DOC-NOAA-2017-001066

131. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

132. The Center has a statutory right to the records it seeks, and there is no legal basis for NOAA to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

133. NOAA has violated the Center's rights in this regard by withholding records that are responsive to the Center's NOAA FOIA Request Number DOC- NOAA-2017-001066.

134. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in FOIA requests to NOAA in the foreseeable future.

135. The Center's organizational activities will be adversely affected if NOAA continues to violate FOIA's disclosure provisions as it has in this case.

136. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Conduct an Adequate Search for Responsive Records

COUNT ONE: The Interior Department Has Failed to Conduct an Adequate Search for All Records Responsive to Interior Department FOIA Request Number OS-2017-00384

137. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

138. The Center has a statutory right to have the Interior Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Interior Department

violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384.

139. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

140. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

141. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Has Failed to Conduct an Adequate Search for All Records Responsive to EPA FOIA Request Number EPA-HQ-2017-005517

142. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

143. The Center has a statutory right to have EPA process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). EPA violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517.

144. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

145. The Center's organizational activities will be adversely affected if EPA continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

146. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Has Failed to Conduct an Adequate Search for All Records Responsive to Energy Department FOIA Request Number HQ-2017-00806

147. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

148. The Center has a statutory right to have the Energy Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Energy Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number HQ-2017-00806.

149. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Energy Department in the foreseeable future.

150. The Center's organizational activities will be adversely affected if the Energy Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

151. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Has Failed to Conduct an Adequate Search for All Records Responsive to State Department FOIA Request Number F-2017-08517

152. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

153. The Center has a statutory right to have the State Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The State Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517.

154. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the State Department in the foreseeable future.

155. The Center's organizational activities will be adversely affected if the State Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

156. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's Commerce Department FOIA Request Number DOC-OS-2017-000939

157. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

158. The Center has a statutory right to have the Commerce Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Commerce

Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939.

159. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Commerce Department in the foreseeable future.

160. The Center's organizational activities will be adversely affected if the Commerce Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

161. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Has Failed to Conduct an Adequate Search for All Records Responsive to the Center's NOAA FOIA Request Number DOC-NOAA-2017-001066

162. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

163. The Center has a statutory right to have NOAA process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). NOAA violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066.

164. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to NOAA in the foreseeable future.

165. The Center's organizational activities will be adversely affected if NOAA continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

166. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

FOURTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
Failure to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records

COUNT ONE: The Interior Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

167. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

168. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

169. The Interior Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Interior Department FOIA Request Number OS-2017-00384.

170. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

171. The Center's organizational activities will be adversely affected if the Interior Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

172. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT TWO: EPA Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

173. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

174. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

175. EPA violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517.

176. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

177. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's disclosure provisions as it has in this case.

178. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

COUNT THREE: The Energy Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

179. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

180. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

181. The Energy Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Energy Department FOIA Request Number HQ-2017-00806.

182. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Energy Department in the foreseeable future.

183. The Center's organizational activities will be adversely affected if the Energy Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

184. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Energy Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FOUR: The State Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

185. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

186. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

187. The State Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to State Department FOIA Request Number ~~F-2017-08517~~.

188. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the State Department in the foreseeable future.

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189. The Center's organizational activities will be adversely affected if the State Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

190. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the State Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT FIVE: The Commerce Department Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

191. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

192. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

193. The Commerce Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939.

194. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Commerce Department in the foreseeable future.

195. The Center's organizational activities will be adversely affected if the Commerce Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

196. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Commerce Department will continue to violate the Center's rights to receive public records under FOIA.

COUNT SIX: NOAA Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records

197. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

198. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

199. NOAA violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066.

200. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to NOAA in the foreseeable future.

201. The Center's organizational activities will be adversely affected if NOAA is allowed to continue violating FOIA's disclosure provisions as it has in this case.

202. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Fourth Claims)
Unlawfully Withheld or Unreasonably Delayed Actions that FOIA Requires

COUNT ONE: The Interior Department Withheld or Unreasonably Delayed Actions that FOIA Requires

203. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

204. The Interior Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose

records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (2) make a timely and lawful determination on Interior Department FOIA Request Number OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all responsive records to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to Interior Department FOIA Request Number OS-2017-00384 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Interior Department FOIA Request Number OS-2017-00384 in the event that records may be subject to an exemption. The Interior Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

205. Alternatively, the Interior Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (2) make a timely and lawful determination on to Interior Department FOIA Request Number OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to OS-2017-00384 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Interior Department FOIA Request Number OS-2017-00384 which contain any material that may be lawfully withheld under an exemption(s). The Interior Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

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206. As alleged above, the Interior Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

207. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

208. The Center has no other adequate remedy at law to redress the violations noted above.

209. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT TWO: EPA Withheld or Unreasonably Delayed Actions that FOIA Requires

210. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

211. EPA unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all responsive records to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to EPA FOIA Request Number EPA-HQ-2017-005517 in the event that records may be subject to an exemption. EPA's failures constitute agency actions that are

unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

212. Alternatively, EPA unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which contain any material that may be lawfully withheld under an exemption(s). EPA's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

213. As alleged above, EPA's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

214. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, EPA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

215. The Center has no other adequate remedy at law to redress the violations noted above.

216. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT THREE: The Energy Department Withheld or Unreasonably Delayed Actions that FOIA Requires

217. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

218. The Energy Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all responsive records to Energy Department FOIA Request Number HQ-2017-00806; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Energy Department FOIA Request Number HQ-2017-00806 in the event that records may be subject to an exemption. The Energy Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

219. Alternatively, the Energy Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions

to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Energy Department FOIA Request Number HQ-2017-00806 which contain any material that may be lawfully withheld under an exemption(s). The Energy Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

220. As alleged above, the Energy Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

221. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, the Energy Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

222. The Center has no other adequate remedy at law to redress the violations noted above.

223. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FOUR: The State Department Withheld or Unreasonably Delayed Actions that FOIA Requires

224. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

225. The State Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to State Department FOIA Request Number F-2017-08517; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all responsive records to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are

responsive to State Department FOIA Request Number F-2017-08517 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to State Department FOIA Request Number F-2017-08517 in the event that records may be subject to an exemption. The State Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

226. Alternatively, the State Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to F-2017-085177; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are responsive to State Department FOIA Request Number F-2017-08517 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to State Department FOIA Request Number F-2017-08517 which contain any material that may be lawfully withheld under an exemption(s). The State Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

227. As alleged above, the State Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

228. The Center has suffered a legal wrong as a result of the State Department's failure to comply with the mandates of FOIA. As alleged above, the State Department violated its

statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

229. The Center has no other adequate remedy at law to redress the violations noted above.

230. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FIVE: The Commerce Department Withheld or Unreasonably Delayed Actions that FOIA Requires

231. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

232. The Commerce Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search for and disclose records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all responsive records to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 that are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to Commerce Department FOIA Request Number DOC-OS-2017-000939 in the event that records may be subject to an exemption. The Commerce Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

233. Alternatively, the Commerce Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) search

for and disclose records that are responsive to DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 that may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which contain any material that may be lawfully withheld under an exemption(s). The Commerce Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

234. As alleged above, the Commerce Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

235. The Center has suffered a legal wrong as a result of the Commerce Department's failure to comply with the mandates of FOIA. As alleged above, the Commerce Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

236. The Center has no other adequate remedy at law to redress the violations noted above.

237. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT SIX: NOAA Withheld or Unreasonably Delayed Actions that FOIA Requires

238. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

239. NOAA unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). NOAA's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

240. Alternatively, NOAA unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). NOAA's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

241. As alleged above, NOAA's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

242. The Center has suffered a legal wrong as a result of NOAA's failure to comply with the mandates of FOIA. As alleged above, NOAA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

243. The Center has no other adequate remedy at law to redress the violations noted above.

244. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

SIXTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Eighth Claims)
Violations of FOIA's Requirements Are Arbitrary, Capricious,
an Abuse of Discretion, or Otherwise Not in Accordance with Law

COUNT ONE: The Interior Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

245. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

246. The Interior Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to OS-2017-00384; (2) make a timely and lawful determination on OS-2017-00384; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Interior Department FOIA Request Number OS-2017-00384; (4) provide the Center with records that are responsive to Interior Department FOIA Request Number OS-2017-00384 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Interior Department FOIA Request

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Number OS-2017-00384 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Interior Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

247. As alleged above, the Interior Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

248. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

249. The Center has no other adequate remedy at law to redress the violations noted above.

250. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT TWO: EPA's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

251. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

252. EPA violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (2) make a timely and lawful determination on EPA FOIA Request Number EPA-HQ-2017-005517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517; (4) provide the Center with records that are responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which may

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not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to EPA FOIA Request Number EPA-HQ-2017-005517 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, EPA's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

253. As alleged above, EPA's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

254. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, EPA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

255. The Center has no other adequate remedy at law to redress the violations noted above.

256. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT THREE: The Energy Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

257. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

258. The Energy Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to Energy Department FOIA Request Number HQ-2017-00806; (2) make a timely and lawful determination on Energy Department FOIA Request Number HQ-2017-00806; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Energy Department FOIA Request Number

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HQ-2017-00806s; (4) provide the Center with records that are responsive to Energy Department FOIA Request Number HQ-2017-00806 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Energy Department FOIA Request Number HQ-2017-00806 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Energy Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

259. As alleged above, the Energy Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

260. The Center has suffered a legal wrong as a result of the Energy Department's failure to comply with the mandates of FOIA. As alleged above, the Energy Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

261. The Center has no other adequate remedy at law to redress the violations noted above.

262. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT FOUR: The State Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

263. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

264. The State Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to State Department FOIA

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Request Number F-2017-08517; (2) make a timely and lawful determination on State Department FOIA Request Number F-2017-08517; (3) conduct a search that is reasonably calculated to locate all records that are responsive to State Department FOIA Request Number F-2017-08517; (4) provide the Center with records that are responsive to State Department FOIA Request Number F-2017-08517 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to State Department FOIA Request Number F-2017-08517 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the State Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

265. As alleged above, the State Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

266. The Center has suffered a legal wrong as a result of ~~the State Department's failure~~ to comply with the mandates of FOIA. As alleged above, the State Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

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267. The Center has no other adequate remedy at law to redress the violations noted above.

268. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

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COUNT FIVE: The Commerce Department's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

269. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

270. The Commerce Department violated FOIA's statutory mandates due to its failure and refusal to (1) search for and disclose records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (2) make a timely and lawful determination on Commerce Department FOIA Request Number DOC-OS-2017-000939; (3) conduct a search that is reasonably calculated to locate all records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939; (4) provide the Center with records that are responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (5) provide the Center with reasonably segregable portions of records responsive to Commerce Department FOIA Request Number DOC-OS-2017-000939 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, the Commerce Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

271. As alleged above, the Commerce Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

272. The Center has suffered a legal wrong as a result of the Commerce Department's failure to comply with the mandates of FOIA. As alleged above, the Commerce Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

273. The Center has no other adequate remedy at law to redress the violations noted above.

274. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

COUNT SIX: NOAA's Violations of FOIA are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

275. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

276. NOAA violated FOIA's statutory mandates due to its failure and refusal to (1) conduct a search that is reasonably calculated to locate all records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066; (2) provide the Center with records that are responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which may not be withheld pursuant to any of FOIA's narrowly construed exemptions to mandatory disclosure; and (3) provide the Center with reasonably segregable portions of records responsive to NOAA FOIA Request Number DOC-NOAA-2017-001066 which contain any material that may be withheld lawfully under an exemption(s). By repeatedly violating FOIA's statutory mandates, NOAA's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

277. As alleged above, NOAA's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

278. The Center has suffered a legal wrong as a result of NOAA's failure to comply with the mandates of FOIA. As alleged above, NOAA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

279. The Center has no other adequate remedy at law to redress the violations noted above.

280. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Plaintiff's FOIA Requests, numbers OS-2017-00384, EPA-HQ-2017-005517, HQ-2017-00806, F-2017-08517, DOC-OS-2017-000939, and DOC-NOAA-2017-001066 with the cut-off date for such searches being the date the searches are conducted, and to provide Plaintiff, by a date certain, with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action.

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2. Declare that Defendants' failures to timely make determinations on Plaintiff's FOIA Requests are unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i), or in the alternative, are an agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

3. Declare that Defendants' failures to properly apply FOIA exemptions, 5 U.S.C. § 552(b), are unlawful under FOIA, or in the alternative, are an agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

4. Declare that Defendants' failures to undertake a search for and disclose to Plaintiff all records that are responsive to Plaintiff's FOIA Requests, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i), or in the alternative, are an agency action that

has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

5. Declare that Defendants' failures to provide Plaintiff with reasonably segregable portions of records which may be lawfully subject to a FOIA exemption, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(7)(b), or in the alternative, are agency actions that have been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

6. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.

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

DATED: August 16, 2017

Respectfully submitted,

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/s/ Margaret E. Townsend
Margaret E. Townsend (D.C. Bar No OR0008)
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374
(971) 717-6409
mtownsend@biologicaldiversity.org

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/s/ Amy R. Atwood
Amy R. Atwood (D.C. Bar No. 470258)
Center for Biological Diversity
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Portland, OR 97211-0374
(971) 717-6401
atwood@biologicaldiversity.org

Attorneys for Plaintiff

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March 30, 2017

VIA ELECTRONIC MAIL

FOIA Officer
Public Reference Facility (SOU1000)
1305 East-West Highway, Room 9719 (SSMC3)
Silver Spring, MD 20910
FOIA@noaa.gov

Re: Freedom of Information Act Request: Climate Censorship

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”), from the Center for Biological Diversity (“Center”), a non-profit organization that works to secure a future for all species hovering on the brink of extinction through science, law, and creative media, and to fulfill the continuing educational goals of its membership and the general public in the process.

REQUESTED RECORDS

The Center requests from the National Oceanic and Atmospheric Administration (“NOAA”) all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to “climate change,” “global warming,” “climate disruption,” “greenhouse gas emissions,” “emissions reductions,” and/or “Paris agreement,” and any related words or phrases.

For purposes of this request, “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind including electronic as well as paper documents, e-mails, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, data bases, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained. All of the foregoing is included in this request if it is in NOAA’s possession and control. If such records are no longer under the control of

NOAA but were at any time, please refer this request to the relevant federal agency or agencies. This request is being sent to the headquarters for NOAA with the understanding that it will be forwarded to any other agency offices where responsive records may be located.

This request is not meant to exclude any other records that, although not specially requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

If you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

In addition, if you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

The Center is willing to receive records on a rolling basis.

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, 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.”). “Readily-accessible” means text-searchable and OCR-formatted. *See* 5 U.S.C. § 552(a)(3)(B). Please provide all records in a readily-accessible, electronic .pdf format. Additionally, please provide the records either in (1) load-ready format with a CSV file index or excel spreadsheet, or if that is not possible; (2) in .pdf format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or “batched,” .pdf file. We appreciate the inclusion of an index.

RECORD DELIVERY

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in the Center taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. You may email or mail copies of the requested records to:

Margaret E. Townsend
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211
mtownsend@biologicaldiversity.org

If you find that this request is unclear, or if the responsive records are voluminous, please call me at (971) 717-6409 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as the Center access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and *non-profit public interest groups*." *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information" 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

I. The Center Qualifies for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when "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 [Federal] government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The Department of Commerce FOIA regulations at 15 C.F.R. § 4.11(l) establish the same standard.

Thus, the NOAA must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns “the operations or activities of the Federal government,” (2) whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) whether the disclosure “will contribute to public understanding” of a reasonably-broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. 40 C.F.R. § 2.107(1)(2). As shown below, the Center meets each of these factors.

A. The Subject of This Request Concerns “The Operations and Activities of the Government.”

The subject matter of this request concerns the operations and activities of the NOAA. This request asks for all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to “climate change,” “global warming,” “climate disruption,” “greenhouse gas emissions,” “emissions reductions,” and/or “Paris agreement,” and any related words or phrases.

This FOIA will provide the Center and the public with crucial insight into government activities by making public any directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases. It is clear that the NOAA’s communications policies involve a specific and identifiable activity of the government, in this case the executive branch agency, the NOAA. *Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted). Thus, the Center meets this factor.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow the Center to convey to the public information about the factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public’s understanding of government activity as it relates to the quality of the human environment. Once the information is made available, the Center will analyze it and present it to its 1.2 million members and online activists and the general public in a manner that will meaningfully enhance the public’s understanding of government activities by making public any directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases.

Thus, the requested records are likely to contribute to an understanding of NOAA operations and activities.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons' Understanding of Any Federal Directive to Remove References to "Climate Change" in Government Materials.

The requested records will contribute to public understanding of how public directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases are consistent with the goals and purposes of the agency, as well as whether they are aligned with federal environmental laws and regulations. Whether there are directives to remove references to "climate change" in government records generally, and specifically whether the NOAA has received a directive to remove references to "climate change" or ban the use of the phrase and other related phrases, are areas of interest to a reasonably-broad segment of the public. The Center will use the information it obtains from the disclosed records to educate the public at large about factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public's understanding of government activity as it relates to the quality of the human environment. *See W. Watersheds Proj. v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) ("... find[ing] that WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how ... management strategies employed by the BLM may adversely affect the environment.").

Through the Center's synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained in and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep't of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (applying "public" to require a sufficient "breadth of benefit" beyond the requester's own interests); *Cnty. Legal Servs. v. Dep't of Hous. & Urban Dev.*, 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester's "work by its nature is unlikely to reach a very general audience," "there is a segment of the public that is interested in its work").

Indeed, the public does not currently have an ability to easily evaluate the requested records, which concern factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public's understanding of government activity as it relates to the quality of the human environment that are not currently in the public domain. *See Cnty. Legal Servs. v. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records "clarify important facts" about agency policy, "the CLS request would likely shed light on information that is new to the interested public."). As the Ninth Circuit observed in *McClellan Ecological*

Seepage Situation v. Carlucci, 835 F.2d 1282, 1286 (9th Cir. 1987), “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations... .”¹

Disclosure of these records is not only “likely to contribute,” but is certain to contribute, to public understanding of government activities by making public any directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public’s understanding of government activity as it relates to the quality of the human environment.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Center is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public’s understanding of government activities by making public any directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases, as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested records will help reveal the factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public’s understanding of government activity as it relates to the quality of the human environment.

The records are also certain to shed light on NOAA’s compliance with its own purpose and goals, as well as federal environmental laws and regulations. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, the Center meets this factor as well.

II. The Center has a Demonstrated Ability to Disseminate the Requested Information Broadly.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. The Center has been

¹ In this connection, it is immaterial whether any portion of the Center’s request may currently be in the public domain because the Center requests considerably more than any piece of information that may currently be available to other individuals. *See Judicial Watch*, 326 F.3d at 1315.

substantially involved in the activities of numerous government agencies for over 25 years, and has consistently displayed its ability to disseminate information granted to it through FOIA. In consistently granting the Center's fee-waivers, agencies have recognized: (1) that the information requested by the Center contributes significantly to the public's understanding of the government's operations or activities; (2) that the information enhances the public's understanding to a greater degree than currently exists; (3) that the Center possesses the expertise to explain the requested information to the public; (4) that the Center possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes the Center as an established expert in the field of imperiled species, biodiversity, and impacts on protected species. The Center's track record of active participation in oversight of governmental activities and decision-making, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure are well established.

The Center intends to use the records requested here similarly. The Center's work appears in more than 2,500 news stories online and in print, radio and TV per month, including regular reporting in such important outlets as *The New York Times*, *Washington Post*, and *Los Angeles Times*. Many media outlets have reported on government agencies removing references to climate change from communications, utilizing information obtained by the Center from federal agencies including NOAA. In 2016, more than 2 million people visited the Center's extensive website, viewing a total of more than 5.2 million pages. The Center sends out more than 277 email newsletters and action alerts per year to more than 1.2 million members and supporters. Three times a year, the Center sends printed newsletters to more than 52,343 members. More than 199,000 people have "liked" the Center on Facebook, and there are regular postings regarding the removal of terms related to climate change from federal government materials. The Center also regularly tweets to more than 49,700 followers on Twitter. The Center intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Public oversight and enhanced understanding of the NOAA's duties is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably-broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). The Center need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch*, 326 F.3d at 1314. It is sufficient for the Center to show how it distributes information to the public generally. *Id.*

III. Obtaining the Requested Records is of No Commercial Interest to the Center.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Center's role of educating the general public. Founded in 1994, the Center is a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) with more than 1.2 million members and online activists dedicated to the protection of endangered and threatened species and wild places. The Center has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. Conclusion

For all of the foregoing reasons, the Center qualifies for a full fee-waiver. We hope that the NOAA will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

If you have any questions, please contact me at (971) 717-6409 or foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

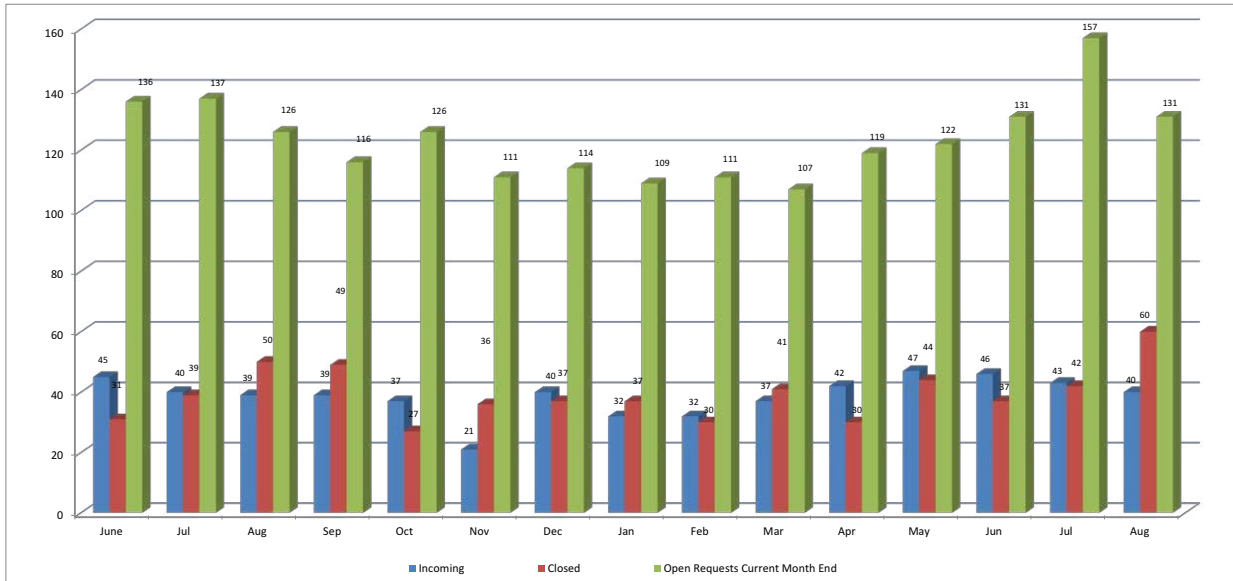
Sincerely,

A handwritten signature in black ink that reads "Margaret E. Townsend". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

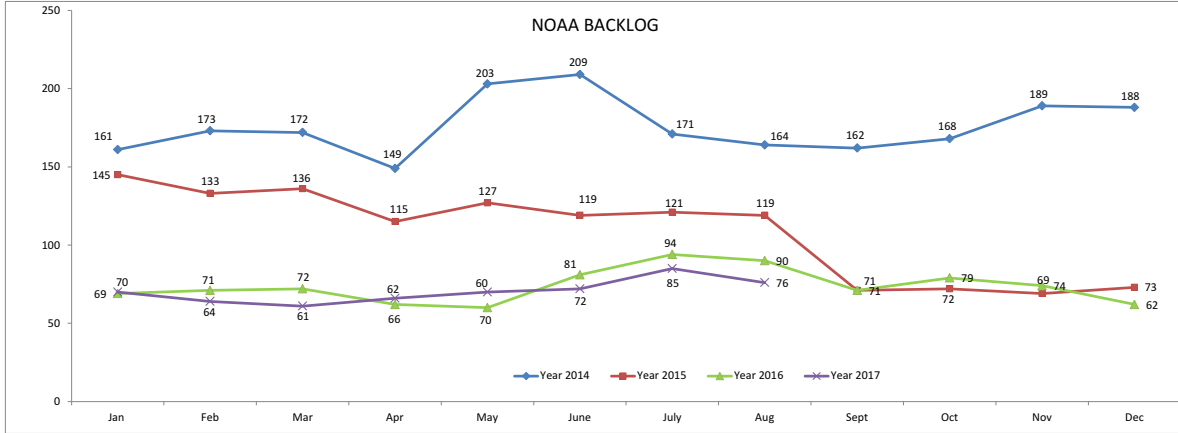
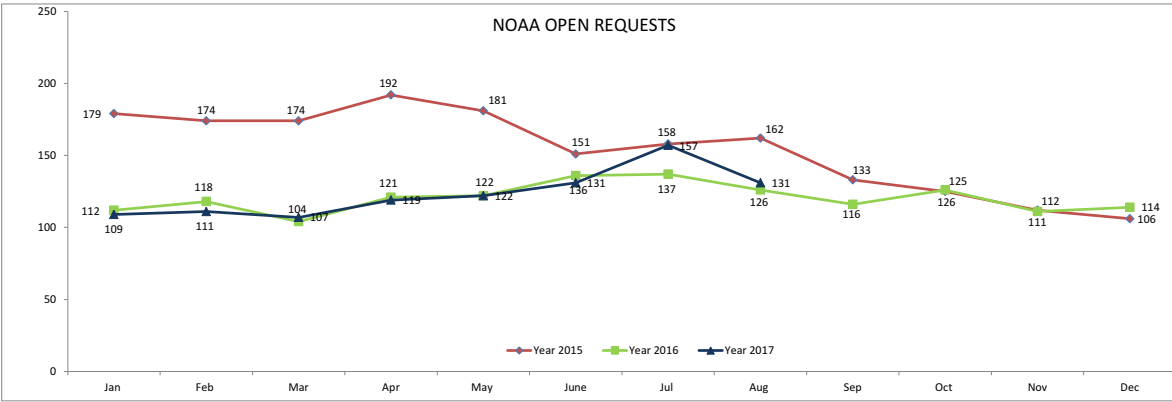
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Portland, OR 97211-0374
foia@biologicaldiversity.org

FOIA Monthly Status Report 08-31-2017

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	10	0	7	4	0	1	3	4
CAO	1	0	0	1	1	0	0	1
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	0	0	0	0	0
CIO/FOIA	9	6	7	2	0	1	0	1
GC	2	1	0	3	2	0	0	2
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	5	3	1	7	4	0	1	5
NMFS	86	14	28	73	31	10	3	44
NOS	10	6	3	14	2	1	1	4
NWS	7	2	4	5	4	0	0	4
OAR	7	2	1	8	4	0	0	4
OMAO	1	0	1	0	0	0	0	0
OC	4	0	1	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	8	5	4	8	3	0	0	3
WFMO	4	1	3	2	0	0	0	0
NOAA Totals	157	40	60	131	55	13	8	76

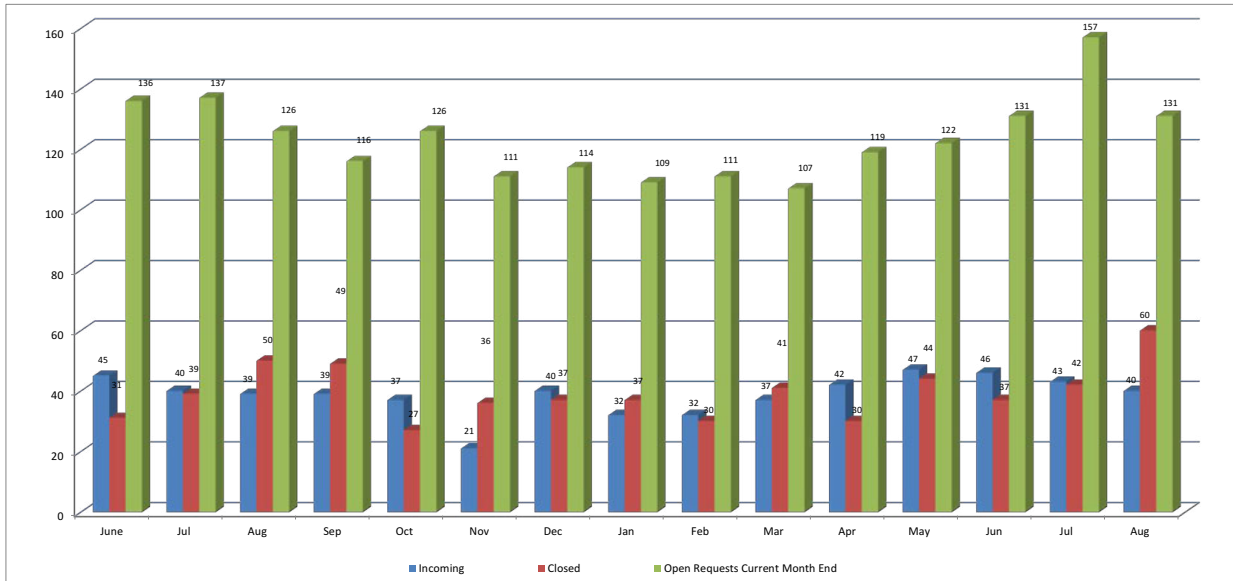


FOIA Monthly Status Report 08-31-2017

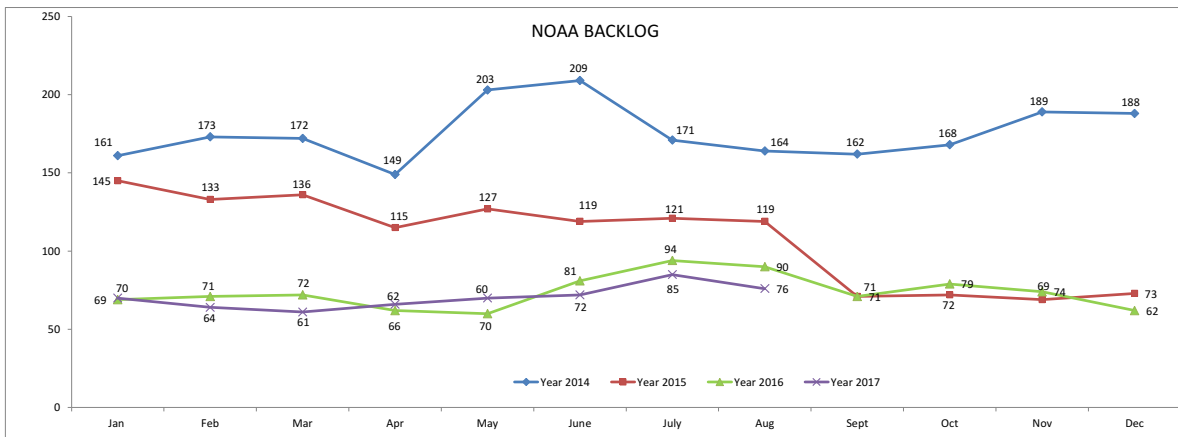
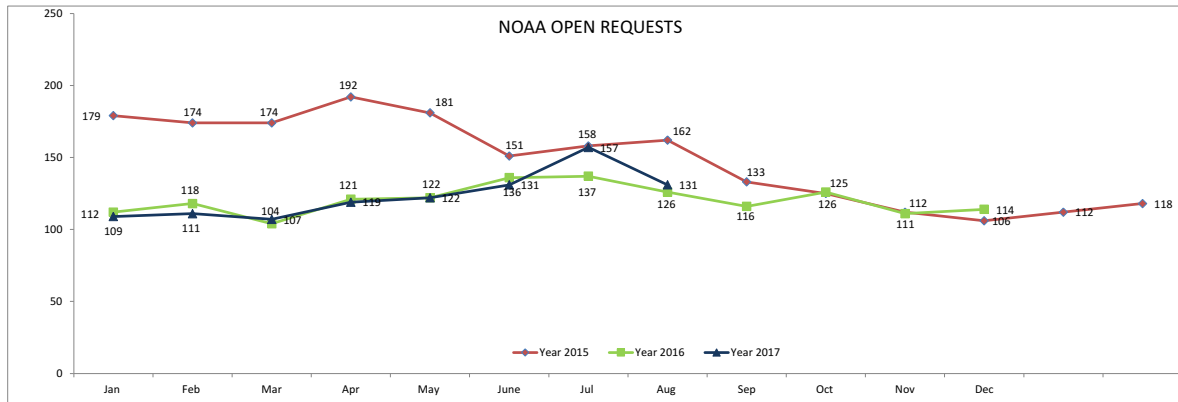


0681b2af562d4f2b8386c4ff5d29ec1e.xlsx

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CIO	2	0	0	0	0	0	0	0
CIO/FOIA	9	6	7	2	0	1	0	1
GC	2	1	0	3	2	0	0	2
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	5	3	1	7	4	0	1	5
NMFS	86	14	28	73	31	10	3	44
NOS	10	6	3	14	2	1	1	4
NWS	7	2	4	5	4	0	0	4
OAR	7	2	1	8	4	0	0	4
OMAO	1	0	1	0	0	0	0	0
OC	4	0	1	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	8	5	4	8	3	0	0	3
WFMO	4	1	3	2	0	0	0	0
NOAA Totals	157	40	60	131	55	13	8	76



0681b2af562d4f2b8386c4ff5d29ec1e.xlsx



Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, September 18, 2017 8:20 AM
To: Samuel Dixon - NOAA Affiliate; Kimberly Katzenbarger - NOAA FEDERAL
Subject: Fwd: Notice of Inadvertent Disclosure of Attorney-Client Privileged Materials in the 4th Interim Response to FOIA Request No. DOC-NOAA-2017-000170

FYI for Cause of Action.

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

From: Kara McKenna <Kara.McKenna@causeofaction.org>
Date: Fri, Sep 15, 2017 at 11:01 AM
Subject: Notice of Inadvertent Disclosure of Attorney-Client Privileged Materials in the 4th Interim Response to FOIA Request No. DOC-NOAA-2017-000170
To: "bdigiaco@doc.gov" <bdigiaco@doc.gov>
Cc: Mark Graff - NOAA Federal <mark.graff@noaa.gov>

Mr. DiGiacomo:

In reviewing the records received from the National Oceanic and Atmospheric Administration ("NOAA") on September 14, 2017 as part of an interim response to Cause of Action Institute's ("CoA Institute") pending Freedom of Information Act Request ("FOIA"), FOIA Request No. DOC-NOAA-20107-000170, CoA Institute became aware that one of the released records, Doc ID. No. 0.7.1205.6866 included in the .zip file titled "170 Interim 3 part 3 b5" uploaded to the FOIAonline website appears to include attorney-client privileged materials.

Pursuant to the D.C. Rules of Professional Conduct, Rule 4.4(b), I have cc'ed NOAA FOIA staff to inform them of what appears to be an inadvertent disclosure. We await your instructions as to whether this is in fact an inadvertent disclosure, and whether we should return or destroy the document.

Please contact me by telephone at [\(202\) 499-4232](tel:(202)499-4232) or by e-mail at Kara.McKenna@causeofaction.org. Thank you for your attention to this matter.

Regards,

Kara McKenna

Kara E. McKenna | Counsel

Cause of Action Institute

1875 Eye Street NW, Suite 800

Washington, D.C. 20006

(o) [202-499-2417](tel:202-499-2417) / ((b)(6))

Admitted to the practice of law in the States of New York and New Jersey, and the District of Columbia.

-

CAUSE of ACTION
— INSTITUTE —

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CAUSE *of* ACTION
— INSTITUTE —

Karen Robin - NOAA Federal

From: Karen Robin - NOAA Federal
Sent: Monday, September 18, 2017 9:57 AM
To: Mark Graff - NOAA Federal
Subject: RE: DOJ Template Language for FALs

Hi Mark,
Regarding the new appeal language ... does the appeal info on this page need updating?
<http://www.noaa.gov/foia-freedom-of-information-act>

Yours,
Karen

—
Karen Robin

FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • (301) 713-6361

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From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Tuesday, August 22, 2017 8:13 AM
To: Symone Stone - NOAA Affiliate; Denise Hamilton - NOAA Federal; Steven Goodman - NOAA Federal; Samuel Dixon - NOAA Affiliate; Lisa Love - NOAA Federal; Nkolika Ndubisi - NOAA Federal; Maria Williams - NOAA Federal; Annie Thomson - NOAA Federal; Gregory Raymond - NOAA Federal; James LeDuc - NOAA Federal; Devin Brakob - NOAA Federal; Velna Bullock - NOAA Federal; Elizabeth McLanahan - NOAA Federal; Scott Smullen - NOAA Federal; Mary Ann Whitmeyer - NOAA Federal; Mark Seiler - NOAA Federal; Jerry McNamara; Stephen Lipps - NOAA Federal; Karen Robin - NOAA Federal; Shem Yusuf - NOAA Federal; DALTON CUMMINGS - NOAA Affiliate; Tejuana Michael - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Robert Hogan; Robert Swisher - NOAA Federal
Subject: DOJ Template Language for FALs

Good Morning,

During the last Chief FOIA Officer's meeting, DOJ and OGIS provided sample language to use in agency Final Action Letters (FAL). DOC has confirmed that we are to continue to provide appeal language in all FALs, including full grants, in order to provide the sufficient notice required by 15 CFR 4.10 and 4.7, consistent with the DOC Best Practices issued in 2016.

As such, please find attached the DOJ-suggested template language for adverse determinations. I'm also attaching a "full release" template for reference. DOC has asked that we begin utilizing the template language immediately. Again, although the "full release" template DOJ provided does not include appeal language, considering the DOC regulations, all FAL's should include the appeal language that is contained in the template adverse FAL below. Thank you and best regards.

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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Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, September 18, 2017 10:47 AM
To: Karen Robin - NOAA Federal
Subject: Re: DOJ Template Language for FALs

Yes it does--although that site is the CIO one that has to go through the Web Committee. It takes some time to adjust forward facing sites.

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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On Mon, Sep 18, 2017 at 9:56 AM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Mark,

Regarding the new appeal language ... does the appeal info on this page need updating?
<http://www.noaa.gov/foia-freedom-of-information-act>

Yours,
Karen

—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

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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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Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Wednesday, June 7, 2017 1:30 PM
To: Robert Hogan
Subject: Fwd: Weekly FOIA Incoming and High Visibility Requests
Attachments: Notice of Appeal.pdf; Weekly FOIA Incoming and High Visibility Requests 05.31.17 - 06.07.17.xls

Hi Bob,

I accidentally left you off of this using my old distro list. Here is the weekly report.

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

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Wed, Jun 7, 2017 at 1:19 PM
Subject: Weekly FOIA Incoming and High Visibility Requests
To: Stephen Lipps - NOAA Federal <stephen.lipps@noaa.gov>, John Almeida - NOAA Federal <john.almeida@noaa.gov>, "Holmes, Colin" <cholmes@doc.gov>, Robert Moller - NOAA Federal <robert.moller@noaa.gov>, Scott Smullen - NOAA Federal <scott.smullen@noaa.gov>, Jeff Dillen - NOAA Federal <jeff.dillen@noaa.gov>, Kristen Gustafson - NOAA Federal <kristen.l.gustafson@noaa.gov>
Cc: Tom Taylor <tom.taylor@noaa.gov>, Kimberly Katzenbarger - NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>, Charles <charles.green@noaa.gov>, Dennis Morgan - NOAA Federal <dennis.morgan@noaa.gov>, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Steven Goodman - NOAA Federal <Steven.Goodman@noaa.gov>, Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Zachary Goldstein - NOAA Federal <Zachary.Goldstein@noaa.gov>, Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>, Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov>, Jeri Dockett - NOAA Affiliate <jeri.dockett@noaa.gov>, "Cc: OCIO/OPPA" <ocio.ppa@noaa.gov>, Troy Wilds - NOAA Federal <troy.wilds@noaa.gov>, Lawrence Charters - NOAA Federal <lawrence.charters@noaa.gov>, Allison Soussi-Tanani - NOAA Federal <Allison.Soussi-Tanani@noaa.gov>, "Bogomolny, Michael (Federal)" <MBogomolny@doc.gov>, Roxie Allison-Holman - NOAA Federal <roxie.allison-holman@noaa.gov>

Good Afternoon,

Attached is the weekly report.

One request was received from PETA Foundation, seeking records on the import of the orca Tilikum pursuant to the MMPA. (DOC-NOAA-2017-001285). This is the same orca that was the subject of the film "Blackfish."

Additionally, two requests were received from The Western Values Project. Both seek various documents and communications related to five separate National Monument Designations. (DOC-NOAA-2017-001317 and DOC-NOAA-2017-001316).

In litigation, NOAA filed its Notice of Appeal in the Judgment rendered in the Our Children's Earth Litigation (see attached). That Judgment had awarded the Plaintiffs attorneys fees in the amount of \$556,434.98 on April 3, 2017.

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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1 BRIAN J. STRETCH (CABN 163973)
United States Attorney
2 SARA WINSLOW (DCBN 457643)
Chief, Civil Division
3 ROBIN M. WALL (CABN 235690)
Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055
5 San Francisco, California 94102-3495
6 Telephone: (415) 436-7071
7 Fax: (415) 436-6748
Robin.Wall@usdoj.gov

8 Attorneys for Defendants

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 OUR CHILDREN’S EARTH FOUNDATION,) CASE NO. 14-cv-01130 WHO
13 *et al,*) CASE NO. 14-cv-04365 WHO
14 Plaintiffs,)
15 v.) **NOTICE OF APPEAL**
16 NATIONAL MARINE FISHERIES SERVICE,)
17 *et al.,*)
18 Defendants.)

19
20 **NOTICE OF APPEAL**

21 Notice is hereby given that the National Marine Fisheries Service, defendant, in the above named
22 case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from an order of the
23 District Court of the Northern District of California entered in this case on March 1, 2017, granting in
24 part and denying in part plaintiffs’ motion for attorney’s fees. ECF 103. The District Court entered
25 judgment awarding attorney’s fees and costs to plaintiffs on April 3, 2017. ECF 108.

26 The award of attorney’s fees and costs was made in two related actions, Case Nos. 14-cv-01130-
27 WHO and 14-cv-04365-WHO, and defendant is appealing in both actions.
28

1 Pursuant to Ninth Circuit Rule 3-2(b), a Representation Statement is attached to this notice.

2 Dated: June 2, 2017

BRIAN J. STRETCH
United States Attorney

3
4 */s/ Robin M. Wall*

5 ROBIN M. WALL
Assistant United States Attorney
Attorneys for Defendant
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REPRESENTATION STATEMENT

Pursuant to Ninth Circuit Rule 3-2(b), defendant hereby identifies the parties to the action along with the names, addresses, and telephone numbers of their respective counsel:

Counsel for Plaintiffs Our Children’s Earth Foundation and Ecological Rights Foundation:

Christopher Alan Sproul
Jodene Louise Isaacs
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121
415/533-3376
Fax: 415/358-5695
Email: csproul@enviroadvocates.com
Email: jisaacs@enviroadvocates.com

Michael A. Costa
Our Children’s Earth Foundation
3848 Sacramento Street, #2
San Francisco, CA 94118
415-342-2242
Email: mike@ocefoundation.org

Patricia Lynn Weisselberg
Law Office of Patricia Weisselberg
115 Oakdale Avenue
Mill Valley, CA 94941
415-388-2303
Email: pweisselberg@wans.net

Counsel for Defendants National Marine Fisheries Service, United States Fish and Wildlife Service, and United States Army Corps of Engineers:

Brian J. Stretch
United States Attorney
Sara Winslow
Chief, Civil Division
Robin M. Wall
Assistant United States Attorney
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7071
Fax: (415) 436-6748
Robin.Wall@usdoj.gov

Tracking Number	Type	Requester	Requester Organization	Submitted	Received
DOC-NOAA-2017-001317	Request	Chris Saeger	Western Values Project	06/07/2017	06/07/2017
DOC-NOAA-2017-001316	Request	Chris Saeger	Western Values Project	06/07/2017	06/07/2017
DOC-NOAA-2017-001314	Request	Michael S. Warren	NJ Advance Media	06/07/2017	06/07/2017
DOC-NOAA-2017-001306	Request	Paula M. Rychtar	NOAA	06/05/2017	06/05/2017
DOC-NOAA-2017-001285	Request	Jared S. Goodman	PETA Foundation	05/30/2017	05/31/2017

Custom Report - 06/07/2017 11:33:

Assigned To	Case File Assigned To	Perfected?	Due	Closed Date
NOAA	NOAA	No	TBD	TBD
NOAA	NOAA	No	TBD	TBD
NOAA	NOAA	No	TBD	TBD
NWS	NWS	Yes	07/03/2017	TBD
Tawand Hodge Tonic	Tawand Hodge Tonic	Yes	06/28/2017	TBD

36

Status	Dispositions
---------------	---------------------

Submitted

Submitted

Submitted

Assignment Determination

Assignment Determination

Detail

See attached letter.

I request access to and copies of any information used to inform the development of the following national monument. I am requesting annual reports from the NOAA Office of Law Enforcement's Northeast Division regarding the total number of marine mammals killed in the area. Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of: I am submitting this request on behalf of People for the Ethical Treatment of Animals (PETA), and pursuant to the Freedom of Information Act,

ent proclamations or expansions during the specified time periods: Northeast Canyons and Seamounts |
number of investigations between 2007 and 2016. I am always requesting any Office of Law Enforceme
eeking the job announcement (if there was one) for National Weather Service Voluntary Observing Ship
I request copies of all records regarding Permit No. 774, issued to SeaWorld on October 7, 1992, to im

Marine National Monument (01/01/14 – 12/31/16) Papahānaumokuākea Marine National Monument Expert reports providing analysis of trends in crimes and regulation violations during that time. I am hoping to Program Manager (VOS PM). This position was vacant for quite some time and hiring of a particular incident report the orca Tilikum pursuant to the Marine Mammal Protection Act (MMPA), from July 7, 2014, to the present.

ansion (01/01/14 – 12/31/16) Pacific Remote Islands Marine National Monument Expansion (01/01/12 -
get an idea of any trends occurring in the region, with particular interest in the waters off of New Jersey
dividual was discussed to have started around November 2016 and the actual date of hire was advertise
resent, excepting correspondence between the agency and PETA, the Animal Welfare Institute, and the

- 12/31/14) Marianas Trench Marine National Monument (01/01/2007 – 12/31/2009) Rose Atoll Marine I
I prefer that these records be delivered to me in an electronic format.
I don't believe this job vacancy was
air representatives. This request includes, but is not limited to, memoranda, reports, notes, letters, email

National Monument (01/01/2007 – 12/31/2009) This should include, but not be lim

advertised and thus not open to all qualified applicants
is, and other correspondence.

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, June 20, 2017 7:47 AM
To: Emily Ho - NOAA Affiliate
Cc: Robert Swisher - NOAA Federal; ann.madden; Lisa Spicer - NOAA Federal; Zoe Black - NOAA AFFILIATE; Robert Hogan
Subject: Re: Request before 6/16 11am SO Directors Meeting
Attachments: NRDC v. EPA_ Complaint.pdf

Hi Emily,

I'd be happy to provide a few talking points. Please let me know if you need more emphasis on either the GC review of USEC/Leg Affairs, or on the recent litigation.

- (b)(5) [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) [REDACTED] (C)

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On Mon, Jun 19, 2017 at 5:05 PM, Emily Ho - NOAA Affiliate <emily.s.ho@noaa.gov> wrote:

Hi Mark,

Thanks for the explanation you provided earlier in the conversation that we had in passing. Doug is having the tagup with the DUS on Friday and requests that you provide some talking points in advance of a quick meeting to go over/discuss them.

Lisa,

Would you please schedule a meeting (15 minutes) with Doug, Mark, and Rob before this Friday?

Thanks,
Emily

On Mon, Jun 19, 2017 at 9:58 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Emily--

I just got back from vacation in NC. Do you have a minute to discuss this? I'm on Zach's calendar for next week, and can give a pre-brief outline of the process problems in the meantime if you'd like.

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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On Thu, Jun 15, 2017 at 5:38 PM, Emily Ho - NOAA Affiliate <emily.s.ho@noaa.gov> wrote:

Hi Mark,

Zach was thinking of bringing up the FOIA delay issue at the SO Director meeting tomorrow at 11.

Before he does s (b)(5)

████████████████████? Would you please advise?

Thanks,
Emily

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Emily Ho
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer
(b)(6)
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Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer

((b)(6) [REDACTED]

Emily.S.Ho@noaa.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY; U.S. FOOD AND DRUG
ADMINISTRATION; NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION; WHITE HOUSE
OFFICE OF MANAGEMENT AND
BUDGET; U.S. DEPARTMENT OF THE
INTERIOR; BUREAU OF LAND
MANAGEMENT; BUREAU OF
RECLAMATION; U.S. FISH AND
WILDLIFE SERVICE; OFFICE OF
SURFACE MINING RECLAMATION
AND ENFORCEMENT; U.S. FOREST
SERVICE; and U.S. DEPARTMENT OF
JUSTICE,

Defendants.

Case No. 17-cv-4084
ECF Case

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Natural Resources Defense Council, Inc. (NRDC) brings this suit to compel the federal government to disclose communications between then-President-elect Donald Trump's transition team and several federal agencies charged with safeguarding the environment and public health. The defendant agencies' failure to release responsive records violates the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and deprives the public of critical information regarding the administration's policies with respect to implementation and enforcement of bedrock health and environmental laws.

2. The transition of power from one President to another is a pivotal time in our democratic system. During this period, the incoming administration sets the foundation for future policymaking, integrates the new President's likely appointees, and ensures the continuation of vital federal functions. The transition is primarily paid for by American taxpayers.

3. Between the November 2016 election and Trump's inauguration in January 2017, members of Trump's transition team communicated with federal agency officials to gather information and lay the groundwork for the new administration's policy priorities. In early December 2016, the Washington Post reported that the transition team asked the Department of Energy for a list of names of employees who had participated in international climate talks or worked

on domestic efforts to cut carbon output.¹ Approximately a week after that, the Post reported that the Trump transition team requested that the Department of State report how much money the department contributes annually to “international environmental organizations in which the department participates.”²

4. The press has also reported that the Trump transition team included “secret” members who played a role in defining the Trump administration’s priorities and producing an “action plan” for the U.S. Environmental Protection Agency.³ Climate change denier and JunkScience.com attorney-blogger Steve Milloy was one of the “secret” members.⁴

5. To date, most of the activities of Trump’s transition team and the list of “secret” members comprising the team have not been publicly disclosed.

6. On December 22 and 23, 2016, NRDC submitted FOIA requests to several federal agencies seeking records of their communications with Trump’s transition team. These agencies include: U.S. Environmental Protection Agency; U.S. Food and Drug Administration; National Oceanic and Atmospheric Administration; White House Office of Management and Budget; U.S. Department

¹ Steven Mufson & Juliet Eilperin, *Trump transition team for Energy Department seeks names of employees involved in climate meetings*, Wash. Post (Dec. 9, 2016), http://wapo.st/2hbSDU0?tid=ss_tw&utm_term=.605e7ffea158.

² Juliet Eilperin & Carol Morello, *Trump team asks State Dept. what it spends on international environmental efforts*, Wash. Post (Dec. 20, 2016), http://wapo.st/2hnfZpb?tid=ss_tw&utm_term=.4a2e9aed48f4.

³ Sean Reilly & Amanda Reilly, *Trump team kept some transition members secret*, E&E News (Feb. 24, 2017), <https://www.eenews.net/stories/1060050546/>.

⁴ *Id.*

of the Interior and certain of its components and agencies; U.S. Forest Service; and U.S. Department of Justice.

7. The agencies' responses to NRDC's FOIA requests are past due. Agencies are generally required to respond to FOIA requests within twenty working days. *See* 5 U.S.C. § 552(a)(6)(A)(i). The twentieth working day following NRDC's submission of its FOIA requests was January 24, 2017 (for requests sent by e-mail on December 22, 2016); January 25, 2017 (for requests sent by e-mail on December 23, 2016); or January 27, 2017 (for a request sent by certified mail on December 22, 2016, and received by the agency on December 28, 2016).

8. In "unusual circumstances," an agency may extend this time limit by up to ten working days. *Id.* § 552(a)(6)(B)(i). The thirtieth working day following NRDC's submission of its FOIA requests was February 7, 2017 (for requests sent by e-mail on December 22, 2016); February 8, 2017 (for requests sent by e-mail on December 23, 2016); or February 10, 2017 (for a request sent by certified mail on December 22, 2016, and received by the agency on December 28, 2016). In some "unusual circumstances," an agency may ask that a FOIA requester narrow a request or agree to a longer response schedule. *See id.* § 552(a)(6)(B)(ii). NRDC has not agreed to a longer schedule with any of the agencies, and no unusual circumstances justify the agencies' continuing failure to provide final responses.

9. Long after these statutory deadlines passed, only one of the defendant agencies has started to produce responsive records. None of the defendant agencies

has provided a final response indicating whether and why records are being withheld.

10. The public has a pressing interest in the Trump administration's efforts to redirect the activities of federal agencies. The failure to release responsive records violates FOIA and deprives the public of critical information regarding the administration's assaults on the nation's bedrock health and environmental laws.

11. NRDC is entitled to immediate processing of its FOIA requests and the release of all responsive records.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

13. Venue is proper in this district because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

PARTIES

14. Plaintiff NRDC is a national, not-for-profit environmental and public health membership organization with hundreds of thousands of members nationwide. NRDC engages in research, advocacy, public education, and litigation related to protecting public health and the environment. NRDC also publishes in several media channels, including online and in print, and regularly communicates newsworthy information to the public, including information obtained under FOIA.

15. Defendant U.S. Environmental Protection Agency (EPA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

16. Defendant U.S. Food and Drug Administration (FDA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

17. Defendant National Oceanic and Atmospheric Administration (NOAA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

18. Defendant White House Office of Management and Budget (OMB) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

19. Defendant U.S. Department of the Interior (DOI) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks. The Office of the Secretary of the Department of the Interior is a component of DOI. The Office of the Solicitor of the Department of the Interior is a component of DOI.

20. Defendant Bureau of Land Management (BLM) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

21. Defendant Bureau of Reclamation (Reclamation) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

22. Defendant U.S. Fish and Wildlife Service (Wildlife Service) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

23. Defendant Office of Surface Mining Reclamation and Enforcement (Surface Mining) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

24. Defendant U.S. Forest Service (Forest Service) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

25. Defendant U.S. Department of Justice (DOJ) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks. The Environment and Natural Resources Division of the Department of Justice is a component of DOJ.

FACTUAL BACKGROUND

26. On December 22, 2016, as detailed below, NRDC filed FOIA requests with EPA, FDA, NOAA, and OMB, for records in each agency's possession, custody, or control that are, include, or reflect communications between agency staff and any member of the transition team of President-elect Donald Trump or Vice-President-elect Mike Pence. Each request explained that "transition team(s)" includes, but is

not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 *note*. These requests were submitted via an online FOIA portal or sent by certified mail, in accordance with each agency's FOIA regulations and guidance.

27. NRDC submitted a FOIA request to EPA via EPA's online FOIA portal on December 22, 2016 (Att. A). EPA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104(a). EPA granted NRDC's fee waiver request on December 29, 2016. On January 17, 2017, EPA notified NRDC that it needed an extension until February 13 for its response. On February 9, 2017, EPA notified NRDC that EPA needed another extension of time. NRDC did not agree to either request. EPA's February 9, 2017 email stated that "it is difficult to predict with certainty how many records may be involved," but "EPA estimates it will be able to complete an initial records search and retrieval for your request by 31 March 2017" and that "[o]f course, we will be working diligently on the request and will provide information to you on a rolling basis, if necessary." In a letter dated March 1, 2017, and transmitted to NRDC by email on March 6, 2017, EPA produced certain materials and reiterated its estimate that it would complete its records search and retrieval by March 31, 2017. EPA's online FOIA portal continues to list March 31, 2017, as the agency's "estimated date of completion."⁵ Almost two months after that date, EPA still has not provided a final response to NRDC's FOIA request.

⁵ *See* FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d2810b9e80#> (last accessed May 31, 2017).

28. NRDC submitted a FOIA request to FDA via the agency's online FOIA portal on December 22, 2016 (Att. B). FDA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 21 C.F.R. § 20.41(b). FDA has not sent a final response to NRDC's FOIA request or produced any records.

29. NRDC submitted a FOIA request to NOAA via the agency's online FOIA portal on December 22, 2016 (Att. C). NOAA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 15 C.F.R. § 4.6(b). NOAA granted NRDC's fee waiver request on January 5, 2017. On February 21, 2017, NOAA sent NRDC an email indicating that the tracking number for the FOIA request had been changed, "which is normally due to the request being transferred to another agency." Neither NOAA nor the Department of Commerce, the cabinet-level agency under which NOAA is housed, has sent a final response to NRDC's request or produced any records.

30. NRDC submitted a FOIA request to OMB via certified mail on December 22, 2016 (Att. D). OMB received the request on December 28, 2016 (Att. E), and its final response was due by January 27, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 5 C.F.R. § 1303.10(c). (The U.S. Postal Service confirmed delivery on December 28, 2016. The certified mail return receipt is signed January 12, 2017 (Att. F).) On January 13, 2017, OMB sent NRDC an e-mail indicating that the FOIA request had been logged. OMB has not sent a final response to NRDC's request or produced any records.

31. On December 23, 2016, as detailed below, NRDC filed FOIA requests with the Department of the Interior and several of its components and agencies (including BLM, Reclamation, Wildlife Service, Surface Mining, and the Office of the Solicitor), the Forest Service, and DOJ, for records in each agency's possession, custody, or control that are, include, or reflect communications between agency staff and any member of the transition team of President-elect Donald Trump or Vice-President-elect Mike Pence. Each request explained that "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 *note*. These FOIA requests were sent by e-mail or certified mail, in accordance with each agency's FOIA regulations and guidance.

32. NRDC submitted a FOIA request to BLM via e-mail on December 23, 2016 (Att. G). BLM's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 28, 2016, BLM informed NRDC that the FOIA request was designated as "Normal track," meaning it "can be processed in six to twenty workdays." BLM has not sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. § 2.24.

33. NRDC submitted a FOIA request to Reclamation via e-mail on December 23, 2016 (Att. H). Reclamation's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 28, 2016, Reclamation informed NRDC that the request was placed on the "Complex" track for processing "in twenty-one to sixty workdays." On January 25, 2017, Reclamation

informed NRDC that the FOIA request was being consolidated with others and referred to the DOI Office of the Secretary. Neither Reclamation nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. §§ 2.13, 2.16(b).

34. NRDC submitted a FOIA request to Wildlife Service via e-mail on December 23, 2016 (Att. I). Wildlife Service's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 27, 2016, Wildlife Service informed NRDC that the FOIA request was being consolidated with others and referred to the DOI Office of the Secretary. Neither Wildlife Service nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. §§ 2.13, 2.16(b).

35. NRDC submitted a FOIA request to Surface Mining via e-mail on December 23, 2016 (Att. J). Surface Mining's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. Surface Mining has not sent a final response to NRDC's request or produced any records.

36. NRDC submitted a FOIA request to the DOI Office of the Solicitor (DOI-Solicitor) via e-mail on December 23, 2016 (Att. K). DOI-Solicitor's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. DOI-Solicitor notified NRDC on December 28, 2016, that NRDC was being classified as an "other use" requester under 43 C.F.R. § 2.39, and that the agency may charge for duplication fees but would not charge review costs. On January 6, 2017, DOI-Solicitor informed NRDC that the DOI Office of the Secretary would be responding

on its behalf to this request. Neither DOI-Solicitor nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See id.* § 2.24.

37. NRDC submitted a FOIA request to the Forest Service via e-mail on December 23, 2016 (Att. L). The Forest Service's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 7 C.F.R. § 1.7(a). On January 6, 2017, the Forest Service notified NRDC that the agency was referring the request to the U.S. Department of Agriculture's FOIA Service Center. NRDC exchanged several e-mails with a U.S. Department of Agriculture employee in January and February, clarifying the scope of the FOIA request. Neither the Forest Service nor the U.S. Department of Agriculture has sent a final response to NRDC's request or produced any records.

38. NRDC submitted a FOIA request to DOJ, through DOJ's Environment and Natural Resources Division, via e-mail on December 23, 2016 (Att. M). DOJ's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.5(c). DOJ has not sent a final response to NRDC's request or produced any records.

39. With each of these FOIA requests, NRDC sought from each agency a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records 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 in NRDC's commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii);

see also 40 C.F.R. § 2.107(*l*) (EPA); 21 C.F.R. § 20.46 (FDA); 15 C.F.R. 4.11(*l*) (NOAA); 5 C.F.R. § 1303.70 (OMB); 43 C.F.R. § 2.45 (DOI); 7 C.F.R. pt. 1, subpart A, app. A, § 6 (Forest Service); 28 C.F.R. § 16.10(k) (DOJ).

40. NRDC also sought a fee waiver because it qualifies as a “representative of the news media” and the records are not for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(b)(6), (c)(1)(iii) (EPA); 21 C.F.R. § 20.45(a)(2) (FDA); 15 C.F.R. § 4.11(b)(6), (c) (NOAA); 5 C.F.R. § 1303.50(c) (OMB); 43 C.F.R. §§ 2.39, 2.70 (DOI); 7 C.F.R. pt. 1, subpart A, app. A, § 5(c) (Forest Service); 28 C.F.R. § 16.10(b)(6), (c) (DOJ).

CLAIM FOR RELIEF

41. Plaintiff incorporates by reference all preceding paragraphs.

42. NRDC has a statutory right under FOIA to obtain immediately all records responsive to its requests that are not exempt from disclosure.

43. Each defendant agency has violated its statutory duty under FOIA, 5 U.S.C. § 552(a), and the applicable implementing regulations, to release all non-exempt, responsive records to NRDC.

44. Each defendant agency has violated its statutory duty under FOIA, 5 U.S.C. § 552(a)(3)(C), to make a reasonable effort to search for responsive records.

45. Because the defendant agencies failed to comply with FOIA’s statutory deadlines, NRDC has a right to obtain responsive records without being assessed any search or duplication fees. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

REQUEST FOR RELIEF

NRDC respectfully requests that the Court enter judgment against the defendant agencies as follows:

- A. Declaring that the agencies have violated FOIA by failing to produce non-exempt records responsive to NRDC's FOIA requests by the statutory deadlines;
- B. Ordering the agencies to disclose the requested records to NRDC without further delay, and without charging search or duplication costs;
- C. Ordering defendants FDA, OMB, BLM, Reclamation, Wildlife Service, Surface Mining, Forest Service, and DOJ, to grant NRDC's fee waiver requests;
- D. Retaining jurisdiction over this case to rule on any assertions by any agency that certain responsive records are exempt from disclosure;
- E. Ordering the agencies to produce an index identifying any documents or parts thereof that the agencies withheld and the basis for the withholding, in the event that any agency determines that certain responsive records are exempt from disclosure;
- F. Awarding NRDC its costs and reasonable attorneys' fees; and
- G. Granting such other relief that the Court considers just and proper.

Dated: May 31, 2017

Respectfully submitted,

/s/ Vivian H.W. Wang

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Attachment A

NRDC

December 22, 2016

Via FOIA Online

Re: FOIA request for communications between the President-elect's transition team and EPA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Environmental Protection Agency (EPA) regulations at 40 C.F.R. § 2.100-2.406.

I. Description of Records Sought

Please produce records¹ in EPA's possession, custody, or control that are, include, or reflect communications between EPA staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Scott Pruitt, Myron Ebell, David Kreutzer, Austin Lipari, David Schnare, David Stevenson, George Sugiyama, Amy Oliver Cooke, Christopher Horner, and Harlan Watson.

II. Request for a Fee Waiver

NRDC requests that EPA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any EPA office, including, but not limited to, EPA Headquarters offices, and specifically including EPA offices in possession of responsive records.

to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(c)(1)(iii).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). Each of the four factors used by EPA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 40 C.F.R. § 2.107(l)(2).

1. Subject of the request

The records requested here reflect communications between EPA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with EPA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at EPA, as further discussed below. However, if EPA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, EPA must presume that this disclosure is likely to contribute to public understanding of its subject. 40 C.F.R. § 2.107(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning EPA staffing and policy, extensive communications capabilities, and proven history

of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of the transition of power at EPA, 40 C.F.R. § 2.107(l)(2)(iii), and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 40 C.F.R. § 2.107(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).

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- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
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As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at EPA and the communications between the President-elect's transition team and EPA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate EPA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. 40 C.F.R. § 2.107(l)(2)(iv).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1), (3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by EPA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if EPA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and EPA's FOIA regulations, 40 C.F.R. § 2.107(c)(1)(iii); see also 40 C.F.R. § 2.107(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 40 C.F.R. § 2.107(b)(6) (“Examples of news media include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and

media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with EPA’s FOIA regulations at 40 C.F.R. § 2.107(c)(1)(iv) for all or a portion of the requested records. *See* 40 C.F.R. § 2.107(l)(4). Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; EPA’s search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104. If EPA concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via FOIA Online):

Attachments 1 through 42 (single .pdf file)

Attachment B



December 22, 2016

Via Online FDA FOIA Portal

Re: FOIA request for communications between the President-elect's transition team and FDA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Food and Drug Administration (FDA) regulations at 21 C.F.R. § 20.1-20.120.

I. Description of Records Sought

Please produce records¹ in FDA's possession, custody, or control that are, include, or reflect communications between FDA staff in the Office of Foods and Veterinary Medicine (including the Center for Food Safety and Applied Nutrition and the Center for Veterinary Medicine) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Peter Thiel, Marie Meszaros, John Brooks, Andrew Bremberg, Renee Amooore, Scott Gottlieb, Eric Hargan, Nina Owcharenko Schaefer, Kamran Daravi, Ed Haislmaier, Maggie Wynne, and Paula Stannard.

II. Request for a Fee Waiver

NRDC requests that FDA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 21 C.F.R. § 20.46(a). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 21 C.F.R. § 20.45(a)(2).

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any FDA office, including, but not limited to, FDA Headquarters offices, and specifically including FDA offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 21 C.F.R. § 20.46(a)(1). Each of the four factors used by FDA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. See 21 C.F.R. § 20.46(b).

1. Subject of the request

The records requested here reflect communications between FDA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 21 C.F.R. § 20.46(b)(1).

2. Informative value of the information to be disclosed

The requested records would “reveal any meaningful information about Government operations or activities that is not already public knowledge.” 21 C.F.R. § 20.46(b)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. See “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with FDA that would similarly have informative value to the public. See *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at FDA, as further discussed below. However, if FDA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, that is sufficient evidence that this disclosure is likely to contribute to public understanding of its subject. 21 C.F.R. § 20.46(b)(3).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning FDA staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the

records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request. *See* 21 C.F.R. § 20.46(b)(3).

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
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Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 21 C.F.R. § 20.46(c). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res.*

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C. NRDC Is a Media Requester

Even if FDA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and FDA's FOIA regulations, 21 C.F.R. § 20.45(a)(2). A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on "Twitter" and "Facebook," and through content distributed to outlets such as Medium. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that "as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities"). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements "are regularly

granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the ACLU).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with FDA’s FOIA regulations for all or a portion of the requested records. *See* 21 C.F.R. § 20.45. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; FDA’s search for—or deliberations concerning—certain records should not delay the production of others that FDA has already retrieved and elected to produce. *See generally* 21 C.F.R. § 20.22, 20.43. If FDA concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange, Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org, 415-875-6184

Enclosures (sent via FOIA Online): Attachments 1 through 42 (single .pdf file)

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media.

Attachment C



December 22, 2016

Via FOIA Online

Re: FOIA request for communications between the President-elect's transition team and NOAA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Commerce regulations at 15 C.F.R. § 4.1-4.11.

I. Description of Records Sought

Please produce records¹ the Department of Commerce's possession, custody, or control that are, include, or reflect communications between National Oceanic and Atmospheric Administration's (NOAA's) staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Wilbur Ross, Ray Washburne, David Bohigian, Joan Maginnis, George Sifakis, William Gaynor, A. Mark Neuman, and Tom Leppert.

II. Request for a Fee Waiver

NRDC requests that NOAA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l). The requested disclosure would meet both of these

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any NOAA office, including, but not limited to, NOAA Headquarters offices, and specifically including NOAA offices in possession of responsive records.

requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 15 C.F.R. § 4.11(c)(1), (d).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(i). Each of the four factors used by NOAA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 15 C.F.R. § 4.11(l)(2).

1. *Subject of the request*

The records requested here reflect communications between NOAA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 15 C.F.R. § 4.11(l)(2)(i).

2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 15 C.F.R. § 4.11(l)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with NOAA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at NOAA, as further discussed below. However, if NOAA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, NOAA must presume that this disclosure is likely to contribute to public understanding of its subject. 15 C.F.R. § 4.11(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning NOAA staffing and policy, extensive communications capabilities, and proven

history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of the transition of power at NOAA, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 15 C.F.R. § 4.11(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).

- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA's part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, "Drug critic slams FDA over antibiotic oversight in meat production," *Reuters*, Jan. 27, 2014 (discussing NRDC's report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," *Nat'l Pub. Radio, All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).

- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).
- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at NOAA and the communications between the President-elect's transition team and NOAA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate NOAA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 15 C.F.R. § 4.11(l)(2)(iv).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(ii). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by NOAA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if NOAA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Department of Commerce FOIA regulations, 15 C.F.R. § 4.11(c), (d); see also 15 C.F.R. § 4.11(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 15 C.F.R. § 4.11(b)(6) (stating that examples of news media include . . . publishers of periodicals). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and

media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department of Commerce’s FOIA regulations for all or a portion of the requested records. *See* 15 C.F.R. § 4.11. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; NOAA’s search for—or deliberations concerning—certain records should not delay the production of others that NOAA has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.7. If NOAA concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via FOIA Online):

Attachments 1 through 42 (single .pdf file)

Attachment D



December 22, 2016

Via Certified Mail

Dionne Hardy, FOIA Officer
Office of Management and Budget
725 17th Street NW, Room 9026
Washington, DC 20503

Re: FOIA request for communications between the President-elect's transition team and OMB staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Office of Management and Budget (OMB) regulations at 5 C.F.R. § 1303.1-1303.70.

I. Description of Records Sought

Please produce records¹ in OMB's possession, custody, or control that are, include, or reflect communications between OMB staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Edwin Meese, Dan Kowalski, Russ Vought, Justin Bogie, Karen Evans, Pat Pizzella, Mark Robbins, Paul Winfree, Linda Springer, and David Burton.

II. Request for a Fee Waiver

NRDC requests that OMB waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 5 C.F.R. § 1303.70. The requested disclosure would meet both of these

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any OMB office, including, but not limited to, OMB Headquarters offices, and specifically including OMB offices in possession of responsive records.

requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 5 C.F.R. § 1303.50(c).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. § 1303.70.

1. Subject of the request

The records requested here reflect communications between OMB and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the Government.” 5 C.F.R. § 1303.70.

2. Informative value of the information to be disclosed

The requested records are “likely to contribute significantly to” the public’s understanding of government operations and activities. 5 C.F.R. § 1303.70. The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with OMB that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at OMB, as further discussed below. However, if OMB were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning OMB staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a

requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at OMB. As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

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NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, "The requirement to rebuild US fish stocks: Is it working?" *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);

- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. See *Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); see also William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. See *Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. See, e.g., "Protest Raised over New Tests of Naval Sonar," Nat'l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. See Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. See, e.g., Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

4. Significance of the contribution to public understanding

The records requested shed light on a matter of considerable public interest and concern: the transition of power at OMB and the communications between the President-elect’s transition team and OMB staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate OMB’s response to any such requests. Thus, disclosure here would significantly contribute to the public’s understanding of government operations or activities. See 5 C.F.R. § 1303.70.

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. § 1303.70. NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Envtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by OMB on the transition relates to a matter

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if OMB denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and OMB's FOIA regulations, 5 C.F.R. § 1303.50(c); *see also* 5 C.F.R. § 1303.30(j) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, U.S. Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 5 C.F.R. § 1303.30(j) (“Examples of news media include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on Twitter and Facebook, and through content distributed to outlets such as Medium. *See* OPEN Gov’t Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (accord[ing] media requester status to the ACLU).³

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media.

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC's publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm'n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with OMB's FOIA regulations for all or a portion of the requested records. *See* 5 C.F.R. § 1303.40. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; OMB's search for—or deliberations concerning—certain records should not delay the production of others that OMB has already retrieved and elected to produce. If OMB concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via FOIA Online): Attachments 1 through 42 (single .pdf file)

Attachment E

USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: 70161970000023486185

 **Delivered**

Updated Delivery Day: Wednesday, December 28, 2016 ⓘ

Product & Tracking Information

[See Available Actions](#)

Postal Product:
Priority Mail™

Features:
Certified Mail™
Return Receipt
Up to \$50 insurance included
Restrictions Apply ⓘ

See tracking for related item:
[9590940304065163920575 \(/go/TrackConfirmAction?tLabels=9590940304065163920575\)](#)

DATE & TIME	STATUS OF ITEM	LOCATION
December 28, 2016, 4:25 am	Delivered	WASHINGTON, DC 20500



Your item was delivered at 4:25 am on December 28, 2016 in WASHINGTON, DC 20500.

December 27, 2016, 11:18 am	Available for Pickup	WASHINGTON, DC 20500
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DATE & TIME	STATUS OF ITEM	LOCATION
December 27, 2016, 10:53 am	Arrived at Unit	WASHINGTON, DC 20018
December 25, 2016, 10:17 pm	In Transit to Destination	

[See More](#) 

Available Actions

[See Less](#) 

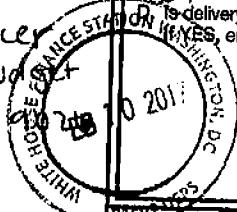
Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

[FAQs \(http://faq.usps.com/?articleId=220900\)](http://faq.usps.com/?articleId=220900)

Attachment F

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature X <i>Dionne Hardy</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to: Dionne Hardy, FOIA Officer Office of Management + Budget 725 19th St. NW, Room 6185 Washington, DC 20503	B. Received by (Printed Name) DIONNE HARDY	C. Date of Delivery 01/12/17
 9590 9403 0406 5163 9205 75	D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, enter delivery address below:	
2. (Transfer from service label) 7016 1970 0000 2348 6185	Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	
PS Form 3811, April 2015 PSN 7530-02-000-9033		Domestic Return Receipt



UNITED STATES POSTAL SERVICE
SAN FRANCISCO DISTRICT
MD 207
30 FEB '17
PM 3 1



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•
Jackie Prange
NRDC
111 Sutter St, 21st Floor
San Francisco, CA 94104

USPS TRACKING#



9590 9403 0406 5163 9205 75

Attachment G

NRDC

December 23, 2016

Via email

blm_wo_foia@blm.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Bureau of Land Management and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
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NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
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As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

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² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment H

NRDC

December 23, 2016

Via email
bor_foia@usbr.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Bureau of Reclamation (BOR) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
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² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

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Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

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Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
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Natural Resources Defense Council, Inc.
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jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment I

NRDC

December 23, 2016

Via email
fwhq.foia@fws.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the United States Fish and Wildlife Service (FWS) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, “Protest Raised over New Tests of Naval Sonar,” Nat’l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration’s Energy Task Force, along with analysis of selected excerpts and links to the administration’s index of withheld documents (Att. 31). NRDC’s efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, “Bush Gets One-Two Punch on Energy,” *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration’s decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, “Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from

International Global Warming Panel,” Apr. 3, 2002 (Att. 33); Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

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Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

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IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

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Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
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Natural Resources Defense Council, Inc.
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415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment J

NRDC

December 23, 2016

Via email

osm-foia@osmre.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Office of Surface Mining Reclamation and Enforcement (OSMRE) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
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- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

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- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
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- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, “Protest Raised over New Tests of Naval Sonar,” Nat’l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration’s Energy Task Force, along with analysis of selected excerpts and links to the administration’s index of withheld documents (Att. 31). NRDC’s efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, “Bush Gets One-Two Punch on Energy,” *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration’s decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, “Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from

International Global Warming Panel,” Apr. 3, 2002 (Att. 33); Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment K

NRDC

December 23, 2016

Via email

sol.foia@sol.doi.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Office of the Solicitor (SOL) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

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NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
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the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

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- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, “Protest Raised over New Tests of Naval Sonar,” Nat’l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
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- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment L

NRDC

December 23, 2016

Via Email

wo_foia@fs.fed.us

Re: FOIA request for communications between the President-elect's transition team and Forest Service staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Agriculture regulations at 7 C.F.R. § 1.1-1.25.

I. Description of Records Sought

Please produce records¹ in the Forest Service's possession, custody, or control that are, include, or reflect communications between Forest Service staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Joel Leftwich and Brian Klippenstein.

II. Request for a Fee Waiver

NRDC requests that the Forest Service waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any Forest Service office, including, but not limited to, Forest Service Headquarters offices, and specifically including Forest Service offices in possession of responsive records.

news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a). Each of the factors used by the Forest Service to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a).

1. *Subject of the request*

The records requested here reflect communications between the Forest Service and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(i).

2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with the Forest Service that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at the Forest Service, as further discussed below. However, if the Forest Service were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure*

NRDC’s expertise in matters concerning Forest Service staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons

with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at the Forest Service, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly reasonably broad. 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
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Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate the Forest Service's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(iv).

5. *NRDC does not have a commercial interest in the disclosure*

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(v), (vi). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); *see Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by the Forest Service on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

B. NRDC is a non-profit organization designed to further public health safety

The Department’s FOIA regulations also give the Forest Service the ability to waive fees if the requester is “engaged in a nonprofit activity designed for the public safety, health, or welfare.” 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(3)(ii). NRDC is a non-profit organization whose mission is to “to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends.” As described in the sections above, NRDC is engaged in nonprofit activity designed to further public health and safety. Therefore, the Forest Service should waive any fees on this basis as well.

C. NRDC Is a Media Requester

Even if the Forest Service denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Forest Service’s FOIA regulations, 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c)(1) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

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entities include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Forest Service’s FOIA regulations for all or a portion of the requested records. *See* 7 C.F.R. Pt. 1, Subpt. A, App. A. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; the Forest Service's search for—or deliberations concerning—certain records should not delay the production of others that the Forest Service has already retrieved and elected to produce. *See generally* 7 C.F.R. § 1.7. If the Forest Service concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via two emails): Attachments 1 through 40

Attachment M

NRDC

December 23, 2016

Via Email

FOIARouting.enrd@usdoj.gov

Re: FOIA request for communications between the President-elect's transition team and ENRD staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Justice regulations at 28 C.F.R. § 16.1-16.301.

I. Description of Records Sought

Please produce records¹ in the Environment and Natural Resources Division's (ENRD's) possession, custody, or control that are, include, or reflect communications between ENRD staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Jeff Sessions, Brian Benczkowski, Zina Bash, Greg Katsas, James Burnham, William Cleveland, David Higbee, J. Patrick Rowan, Jessie Liu, Ronald Tenpas, Lizette Benedi Herraiz, Steven Engel, Thomas Wheeler, Stefani Carter, James Burnham, Michael Battle, and Edmund Searby.

II. Request for a Fee Waiver

NRDC requests that ENRD waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. §

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any ENRD office, including, but not limited to, ENRD Headquarters offices, and specifically including ENRD offices in possession of responsive records.

552(a)(4)(A)(iii); *see also* 28 C.F.R. § 16.10(k)(1)(i), (ii). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 28 C.F.R. § 16.10(c)(1)(i), (d)(1).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(1)(i). Each of the four factors used by ENRD to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 28 C.F.R. § 16.10(k)(2).

1. Subject of the request

The records requested here reflect communications between ENRD and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 28 C.F.R. § 16.10(k)(2)(i).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 28 C.F.R. § 16.10(k)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with ENRD that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at ENRD, as further discussed below. However, if ENRD were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, ENRD must presume that this disclosure is likely to contribute to public understanding of its subject. 28 C.F.R. § 16.10(k)(2)(iii).

However, even if NRDC were not a media requester, NRDC's expertise in matters concerning ENRD staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a "broad audience of persons interested in the subject" of the transition of power at ENRD, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 28 C.F.R. § 16.10(k)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters

and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly

Kindy, "Are secret, dangerous ingredients in your food?" *Wash. Post*, Apr. 7, 2014 (discussing NRDC's report) (Att. 23).

- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA's part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, "Drug critic slams FDA over antibiotic oversight in meat production," *Reuters*, Jan. 27, 2014 (discussing NRDC's report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," Nat'l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).

- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).
- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at ENRD and the communications between the President-elect's transition team and ENRD staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate ENRD's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 28 C.F.R. § 16.10(k)(2)(iv).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’t. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by ENRD on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

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Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

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Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures: Attachments 1 through 40 (sent via two emails)

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, June 20, 2017 8:10 AM
To: Kimberly Katzenbarger - NOAA Federal
Cc: Martha McCoy - NOAA Federal; Jackie Rolleri - NOAA Federal
Subject: Re: FOIA 2017-001233 - Requester: Derek Miller - RE: ONMS/MBNMS Correspondence with Foundations
Attachments: 2nd fee notice-000880.docx

Hi Guys--

(b)(5)
[Redacted]

[Redacted] I'm attaching one of those letters for your reference and you can use it as you'd like.

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.

On Mon, Jun 19, 2017 at 6:45 PM, Kimberly Katzenbarger - NOAA Federal <kimberly.katzenbarger@noaa.gov> wrote:

Marty (b)(5)
[Redacted]

[Redacted] I could be wrong, but Mark will know off the top of his head. Thanks,
Kim

On Mon, Jun 19, 2017 at 6:16 PM, Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov> wrote:

Hi Mark, Kim, and Jackie,

If I could impose on your expertise one more ti

(b)(5)

I am planning to respond to the FOIA liaison by noon tomorrow.

The FOIA liaison asked:

(b)(5)

My suggested responses are as follows:

(b)(5)

Again, thank you,

Marty

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

From: **Scott Kathey** <scott.kathey@noaa.gov>

Date: Mon, Jun 19, 2017 at 6:04 PM

Subject: Re: FOIA 2017-001233 - Requester: Derek Miller - RE: ONMS/MBNMS Correspondence with Foundations

To: Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov>, Aida Pettegrue <aida.pettegrue@noaa.gov>

Cc: Michelle Mills <Michelle.Mills@noaa.gov>, Jackie Rolleri - NOAA Federal <jackie.rolleri@noaa.gov>, Stephanie Altman - NOAA Federal <stephanie.altman@noaa.gov>, "Michel, Paul" <Paul.Michel@noaa.gov>

Marty,

(b)(5)

(b)(5)

Thanks,

Scott

Scott Kathey
Federal Regulatory Coordinator
Monterey Bay National Marine Sanctuary
National Oceanic & Atmospheric Administration
U.S. Department of Commerce
99 Pacific Street, Bldg 455A
Monterey, California 93940
Phone: [831-647-4251](tel:831-647-4251)
FAX: [831-647-4250](tel:831-647-4250)

On 6/19/17 2:33 PM, Martha McCoy - NOAA Federal wrote:

ATTORNEY-CLIENT CONFIDENTIAL

Hi Aida,

Thank you for the additional information. I recommend (b)(5)

[Redacted]

[Redacted]

[Redacted]

--

Kimberly Katzenbarger, Attorney
National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
1315 East West Hwy, Suite 15104
Silver Spring, MD 20910-3282
Desk: [301-713-7448](tel:301-713-7448)
Cel: (b)(6)

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.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Workforce Management Office
1305 East West Highway, 12th floor
Silver Spring, MD 20910

Via FOIAonline and USPS

Mr. Radu Munteanu
98 East Jefferson St.
Falls Church, VA 22046

Re: FOIA Request No. DOC-NOAA-2017-000880

Dear Mr. Munteanu:

Our correspondence of May 15, 2017, informed you of estimated fees that would be incurred by your request for records pertaining persons who applied to a Grants Management Specialist position within the National Oceanic and Atmospheric Administration (NOAA) via job announcement number SO-AGO-2016-0001). You did not contact us or respond with payment of the estimated fees by the June 14, 2017, deadline. If you do not contact us by Monday, July 3, 2017 (10 business days from the date of this letter), this request will be deemed abandoned and the file will be closed.

You have the right to appeal this adverse determination. An appeal must be received within 90 calendar days of the date of this letter. Your appeal may be sent by any of the following means:

- E-mail: foiaappeals@doc.gov
- Facsimile (fax): 202-482-2552
- FOIAonline, if you have an account: <https://foiaonline.regulations.gov>
- Mail:
Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce, Office of General Counsel
14th and Constitution Avenue, N.W., Room 5875
Washington, D.C. 20230

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

- A copy of your original request.
- Our fee estimate letter
- This letter.
- Your statement explaining why the fee estimate was in error.
- "Freedom of Information Act Appeal" must appear on your appeal statement. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

We receive correspondence only on business days from 8:30 a.m. to 5:00 p.m., Eastern Time. FOIA appeals received outside of our normal business hours will be deemed received on the next business day.

You may also contact Robert Swisher, NOAA FOIA Public Liaison, for assistance at 301-628-5755, or seek dispute resolution services from the Office of Government Information Services via <https://ogis.archives.gov/>.

If you choose not to appeal, but have any questions about the way we handled your request, or about our FOIA regulations or procedures, please contact Karen Robin, NOAA Workforce Management FOIA Liaison, at 301-713-6361 or karen.robin@noaa.gov.

Sincerely,

Karen Robin
FOIA Liaison, Workforce Management

Samuel Dixon

From: Samuel Dixon
Sent: Wednesday, June 21, 2017 9:05 AM
To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate; Steven Goodman - NOAA Federal
Subject: Fwd: PLEASE REASSIGN TO DOC FOIA - Fwd: Please contact me - Fwd: FOIA Assignment for DOC-NOAA-2017-001394
Attachments: NOAA FOIA re red snapper order_final.pdf; 2017-001394 Request .pdf

Hi Mark and Lola,

Please see Bev's email belo (b)(5) .

Thanks,

Sam

Samuel Dixon
Contractor - IBSS Corp
NMFS Assistant FOIA Liaison
(301) 427-8739
samuel.dixon@noaa.gov

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

From: Beverly Smith - NOAA Federal <beverly.smith@noaa.gov>
Date: Wed, Jun 21, 2017 at 8:59 AM
Subject: PLEASE REASSIGN TO DOC FOIA - Fwd: Please contact me - Fwd: FOIA Assignment for DOC-NOAA-2017-001394
To: Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>
Cc: Beverly Smith <beverly.smith@noaa.gov>, Sophia Howard <sophia.howard@noaa.gov>, John McGovern <john.mcgovern@noaa.gov>

Hi Sam,

(b)(5)
[Redacted text block]

Sophia, I have attached the request as an FYI.

Thank you.
Beverly

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

From: **Beverly Smith - NOAA Federal** <beverly.smith@noaa.gov>
Date: Tue, Jun 20, 2017 at 10:05 AM
Subject: PLEASE CONTACT ME - Fwd: FOIA Assignment for DOC-NOAA-2017-001394
To: John McGovern <john.mcgovern@noaa.gov>
Cc: Beverly Smith <beverly.smith@noaa.gov>

Hi Jack,

Below is a new incoming FOIAonline assignment regarding a request from Ocean Conservancy. A copy of the request is attached.

Please call me (X5762) to discuss the scope and custodian offices identified by the requester; specifically, DOC and NOAA.

Please also note that the requester seeks expedited processing, which means the response must be completed in 10-business days. This expedited processing request is under consideration by NOAA FOIA, but has not been granted or denied to date.

Thank you.
Bev.

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

From: foia@regulations.gov <foia@regulations.gov>
Date: Tue, Jun 20, 2017 at 9:08 AM
Subject: FOIA Assignment for DOC-NOAA-2017-001394
To: "nmfs.sero.foia1@noaa.gov" <nmfs.sero.foia1@noaa.gov>

You have been assigned to the FOIA request DOC-NOAA-2017-001394. Additional details for this request are as follows:

- Assigned By: Samuel B. Dixon
- Request Tracking Number: DOC-NOAA-2017-001394
- Due Date: 07/18/2017
- Requester: Ivy N. Fredrickson
- Request Track: Simple
- Short Description: N/A
- Long Description: We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, electronic mail records, or other documents, which were generated, received, kept, and/or considered by NMFS relating to the reopening of the red snapper season, between the dates of January 20, 2017 and June 19, 2017. This includes documents, records, and materials regarding:

1. extension or reopening of the private recreational red snapper season;
2. how or whether this action would affect progress toward rebuilding under the red snapper rebuilding plan;
3. how or whether this action may cause or contribute to overfishing; and
4. data, computations, or any other analysis used to determine the number of days the season would be open.

We request documents, records, and materials pertaining to the above enumerated subjects involving, but not limited to, the following people:

1. Wilbur Ross
 2. Samuel Rauch
 3. Alan Risenhoover
 4. Roy Crabtree
 5. Andy Strelcheck
 6. George Kelly
 7. Earl Comstock
 8. Bonnie Ponwith
 9. Patrick Lynch
 10. Emily Menashes
 11. Benjamin Friedman
 12. Lindsey Kraatz
- Assigned Comments: Hi Bev, let me know if this doesn't belong to SERO.

--

Beverly J. Smith
FOIA Coordinator
Southeast Region
NOAA's National Marine Fisheries Service
[727-551-5762](tel:727-551-5762)

--

Beverly J. Smith
FOIA Coordinator
Southeast Region
NOAA's National Marine Fisheries Service
[727-551-5762](tel:727-551-5762)

1300 19th Street NW
8th Floor
Washington DC 20036



202.429.5609 Telephone
202.872.0619 Facsimile
www.oceanconservancy.org

June 19, 2017

SENT VIA FOIA ONLINE

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

Re: Freedom of Information Act Request for Documents, Records, and Materials

Dear FOIA Officer(s):

Ocean Conservancy submits this request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq., for which I also request expedited processing.

Documents Requested

On June 19, 2017, the Department of Commerce (DoC), the National Oceanic and Atmospheric Administration (NOAA), and the National Marine Fisheries Service (NMFS) (collectively "NMFS") published a rule in the Federal Register titled, "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Revised 2017 Recreational Fishing Season for Red Snapper Private Angling Component in the Gulf of Mexico (RIN 0648-XF499)." This rule reopens the private angling component for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico.

We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, electronic mail records, or other documents, which were generated, received, kept, and/or considered by NMFS relating to the reopening of the red snapper season, between the dates of January 20, 2017 and June 19, 2017. This includes documents, records, and materials regarding:

- 1. extension or reopening of the private recreational red snapper season;**
- 2. how or whether this action would affect progress toward rebuilding under the red snapper rebuilding plan;**
- 3. how or whether this action may cause or contribute to overfishing; and**
- 4. data, computations, or any other analysis used to determine the number of days the season would be open.**

We request documents, records, and materials pertaining to the above enumerated subjects involving, but not limited to, the following people:

- 1. Wilbur Ross**
- 2. Samuel Rauch**
- 3. Alan Risenhoover**

4. **Roy Crabtree**
5. **Andy Strelcheck**
6. **George Kelly**
7. **Earl Comstock**
8. **Bonnie Ponwith**
9. **Patrick Lynch**
10. **Emily Menashes**
11. **Benjamin Friedman**
12. **Lindsey Kraatz**

For purposes of this request, “documents, records, and materials” should be interpreted to include copies of all correspondence, including, but not limited to, internal memoranda, memoranda and correspondence with any other federal, state or foreign agencies or individuals, papers, maps, data, scientific (clinical and nonclinical) studies, samples, schematics, field notes/reports, telephone logs, briefing/application documents, electronic mail, and notes documenting any communication (regardless of physical form or characteristics). “NMFS” should be interpreted to include the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service/NOAA Fisheries.

Expedited Processing

I respectfully submit that this request meets the criteria for expedited processing under applicable regulations (15 C.F.R. § 4.6(f)) because the requestor is primarily engaged in disseminating information and has established below that the request is urgently needed to inform the public concerning some actual or alleged government activity. As explained in the following section, Ocean Conservancy is a public interest organization and will disseminate the information to the public and our members via media channels such as our website, blog, and newsletters. The matter in question is of widespread and exceptional media interest and involves questions about the government’s integrity which affects public confidence.

This information will allow the public to gain a complete understanding of the government’s rationale and data upon which it has based its management decisions. This request is urgent because the temporary rule is only in effect for a matter of months and is not subject to any form of public comment. Delay will be detrimental to the public resource and to the public’s understanding of this decision by the agency.

Fee Waiver Requested

Ocean Conservancy is willing to pay up to \$500 to fulfill this records request. However, we request a waiver of any fees associated with this request that exceed \$500. FOIA mandates that agencies waive or reduce search and copying fees where the disclosure 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).

In addition to the statutory direction, the U.S. Department of Commerce has issued regulations outlining factors that it considers in deciding whether a fee waiver is warranted: (1) the request concerns the operations or activities of the government; (2) the disclosure will have value to the public and will likely contribute to public understanding of government operations or activities; (3) the disclosure will

contribute significantly to public understanding; (4) the disclosure is not primarily in the requester's commercial interest. See 15 C.F.R. § 4.11(k).

As one court explained, if a non-profit organization has "identified why they wanted the administrative record, what they intended to do with it, to whom they planned on distributing it, and the [relevant] expertise of their membership," then a waiver is appropriate. *Ctr. for Biological Diversity v. Office of Mgmt. & Budget*, 546 F. Supp. 2d 722, 727 (N.D. Cal. 2008) (internal quotation omitted). The information provided below demonstrates that Ocean Conservancy meets the required criteria and are entitled to a full fee waiver.

1. The Request Concerns the Operations and Activities of the Government.

This FOIA request seeks information relevant to NMFS's management of red snapper in the Gulf of Mexico reef fish fisheries. Accordingly, the FOIA request directly concerns the operations and activities of the government in managing and protecting public resources managed by NMFS. This request will enable Ocean Conservancy to evaluate the strength of and basis for the agency's decisions regarding red snapper management. Accordingly, the FOIA request directly implicates the operations and activities of the government in managing public resources in the Gulf of Mexico.

2. The Requested Information Has Value to the Public and Will Likely Contribute to Public Understanding of Government Operations or Activities.

There is a direct connection between the requested records and NMFS's operations and activities in managing red snapper. The requested records relate to the government's evaluation of red snapper catch, the private recreational season, annual catch limits, and accountability measures. Access to these records will allow Ocean Conservancy to evaluate NMFS's red snapper catch estimations for the private recreational fishery. Consequently, the requested documents are critical to a meaningful assessment of the agency's actions and a thorough public understanding of the government's operations and activities in regulating the recreational fishery.

While the final and temporary rules regarding red snapper are available to the public, the data, documents, and communications requested by Ocean Conservancy are not. The requested documents are necessary for the public to gain a complete understanding of the government's rationale and data upon which it has based its management decisions. This information is critical to assessing the government's actions in protecting this public resource. Accordingly, disclosure of the requested information will contribute significantly to public understanding of the government's operations and activities with respect to this fishery.

Ocean Conservancy is a public-interest organization whose core mission involves using science, law, and policy to protect the world's oceans by, among other mechanisms, monitoring government management of public resources, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. Ocean Conservancy's experts will scrutinize the scientific underpinnings of the requested documents; these analyses will form the basis for responding to NMFS's management decisions and educating the public. See *Friends of the Coast Fork v. U.S. Dep't of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997).

Ocean Conservancy also intends to disseminate information that may be available in the requested records through various means, including newsletters, reports, newspaper and magazine articles,

electronic action alerts, web sites, and through other formal and informal communications. These types of public outreach are sufficient to warrant a fee waiver. *See W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) (noting cases holding “statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public sufficient to entitle an organization to a fee waiver”).

Ocean Conservancy possesses the experience and expertise necessary to evaluate the requested information and provide it to the public in a useful form. *Cf. W. Watersheds Proj.*, 318 F. Supp. 2d at 1040-41. Ocean Conservancy is highly qualified to extract, synthesize, analyze, and convey the requested information to its members, other organizations, and the public at large in a way that will increase understanding of government actions affecting red snapper and fisheries in the Gulf of Mexico. Ocean Conservancy has a long history of evaluating information similar to that requested here and distributing it to help inform the public and encourage participation in future planning processes.

Since 1972, Ocean Conservancy has sought to improve the health of our nation’s marine wildlife and fish. To that end, and as part of its organizational goals, Ocean Conservancy seeks to prevent degradation of marine habitats and end overfishing—catching more fish than the remaining population can replace. Ocean Conservancy aims to help restore and sustain fisheries by restoring depleted fish populations and supporting sustainable long-term management.

Ocean Conservancy has gained a detailed understanding of the issues surrounding the management of Gulf red snapper. In the 1990s, Ocean Conservancy became involved in the red snapper fishery. For the past three decades, Ocean Conservancy has worked to promote a healthy red snapper stock so that the resource can be used for generations to come. Ocean Conservancy staff has attended meetings of the Gulf of Mexico Fishery Management Council meeting for decades and has been thoroughly engaged in red snapper management in recent years.

Moreover, Ocean Conservancy staff and members have participated extensively in the relevant public processes involving red snapper management over the last decade, by, among other things, submitting comments to NMFS and the Gulf of Mexico Fishery Management Council concerning the management of red snapper and the protection of marine life in the Gulf ecosystem.

3. The Disclosure Will Contribute Significantly to Public Understanding.

Disclosure of these records will further the understanding of the public at large and is likely to be of interest to a broad audience. Ocean Conservancy is a public-interest organization whose core mission is to protect the environment, public resources, and human health by, among other mechanisms, monitoring government management of marine waters, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. The records will further both the organization’s and members’ understanding of red snapper catch, abundance, and management in the Gulf of Mexico.

Issues involving red snapper season length in the Gulf of Mexico are of significant public interest and have been the subject of significant public discourse as well as NMFS and Gulf of Mexico Fishery Management Council processes. The requested disclosure will significantly increase public understanding of NOAA’s operations and activities pertaining to this public resource.

Ocean Conservancy's headquarters is located in Washington, D.C., and Ocean Conservancy has additional offices in key U.S. coastal areas. Ocean Conservancy's website and publications educate its over 130,000 members and supporters and the public regarding marine conservation and fishery management.

These records will provide information underlying the agency's decision-making, afford insight into the agency's decision-making processes, and highlight any competing viewpoints. These records will allow the requester to evaluate the agency's decision-making and the adequacy of the analyses, thereby facilitating public oversight of agency operations.

Ocean Conservancy and other members of the public have participated actively in efforts to rebuild red snapper and address fishery overages. Ocean Conservancy will use information gained through this FOIA request to inform its participation in fishery management council meetings, comments to the agency, and as a basis for evaluating the analyses and conclusions of the agency's red snapper management decisions.

4. Ocean Conservancy Has No Commercial Interest in the Disclosure of the Information.

Ocean Conservancy is a § 501(c)(3) tax-exempt nonprofit advocacy organization dedicated to protecting the ocean from today's greatest global challenges. Together with our partners, we create science-based solutions for a healthy ocean and the wildlife and communities that depend on it. The requester is a nonprofit organization that has no commercial interest in the requested records. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requestors" (quoting legislative history)).

5. Ocean Conservancy Is a Media Representative.

Members of the news media are entitled to waivers of search fees. 5 U.S.C. § 552(a)(4)(A)(ii)(II); 43 C.F.R. § 2.39(a). A representative of the news media includes "publishers of periodicals . . . who make their products available for purchase by or subscription by or free distribution to the general public." 5 U.S.C. § 552(a)(4)(A)(ii)(III); 43 C.F.R. § 2.70. News media broadly disseminate "information that is about current events or that would be of current interest to the public." *Id.* The waiver extends to a nonprofit organization that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (quoting 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)); *Cause of Action v. FTC*, 799 F.3d 1108, 1115-17 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr. V. Dep't of Def.*, 241 F. Supp.2d 5, 12 (D.D.C. 2003).

Ocean Conservancy functions as a member of the news media because it regularly gathers, publishes, and disseminates information to the public. Ocean Conservancy has 130,000 members. Ocean Conservancy gathers, synthesizes, and publishes information and news concerning marine conservation which it broadly disseminates to its membership and the press through its website and blog, press releases, quarterly print publication which it distributes to 115,000 households, and regular email newsletter which it distributes to its over 800,000 members and supporters. *Cause of Action*, 799 F.3d at 1124 (for the news-media provision, an organization's website, newsletter, press releases, and press contacts will be considered in combination); *Judicial Watch v. U.S. Dept. of Justice*, 133 F. Supp. 2d 52, 53-4 (D.D.C. 2000) (website that disseminated information and radio show were sufficient to establish

status of representative of media) 22 880 F.2d at 1387 (quoting 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)); 241 F. Supp. 2d at 14 n.6 (noting that newsletter that was "published regularly, over a period of time, and . . . disseminate[d] actual 'news' to the public" was evidence that nonprofit organization was a member of the news media).

As provided by 5 U.S.C. § 552(a)(6)(D), we look forward to a reply within ten (10) working days. If the agency chooses to withhold certain documents from disclosure pursuant to FOIA exemptions, we request that it: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (ii) explain in full the basis on which non-disclosure is justified; and (iii) provide us with any segregable portions of the documents for which a specific exemption is not claimed.

Please contact me if you have any questions, or if I can clarify this request in any way. I can be reached at 503-896-1171. Thank you in advance for your assistance.

Sincerely,

s/ Ivy Fredrickson
Staff Attorney
Ocean Conservancy
1300 19th St., NW, 8th Floor
Washington, DC 20036
ifredrickson@oceanconservancy.org

1300 19th Street NW
8th Floor
Washington DC 20036



202.429.5609 Telephone
202.872.0619 Facsimile
www.oceanconservancy.org

June 19, 2017

SENT VIA FOIA ONLINE

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

Re: Freedom of Information Act Request for Documents, Records, and Materials

Dear FOIA Officer(s):

Ocean Conservancy submits this request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq., for which I also request expedited processing.

Documents Requested

On June 19, 2017, the Department of Commerce (DoC), the National Oceanic and Atmospheric Administration (NOAA), and the National Marine Fisheries Service (NMFS) (collectively "NMFS") published a rule in the Federal Register titled, "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Revised 2017 Recreational Fishing Season for Red Snapper Private Angling Component in the Gulf of Mexico (RIN 0648-XF499)." This rule reopens the private angling component for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico.

We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, electronic mail records, or other documents, which were generated, received, kept, and/or considered by NMFS relating to the reopening of the red snapper season, between the dates of January 20, 2017 and June 19, 2017. This includes documents, records, and materials regarding:

- 1. extension or reopening of the private recreational red snapper season;**
- 2. how or whether this action would affect progress toward rebuilding under the red snapper rebuilding plan;**
- 3. how or whether this action may cause or contribute to overfishing; and**
- 4. data, computations, or any other analysis used to determine the number of days the season would be open.**

We request documents, records, and materials pertaining to the above enumerated subjects involving, but not limited to, the following people:

- 1. Wilbur Ross**
- 2. Samuel Rauch**
- 3. Alan Risenhoover**

4. Roy Crabtree
5. Andy Strelcheck
6. George Kelly
7. Earl Comstock
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9. Patrick Lynch
10. Emily Menashes
11. Benjamin Friedman
12. Lindsey Kraatz

For purposes of this request, “documents, records, and materials” should be interpreted to include copies of all correspondence, including, but not limited to, internal memoranda, memoranda and correspondence with any other federal, state or foreign agencies or individuals, papers, maps, data, scientific (clinical and nonclinical) studies, samples, schematics, field notes/reports, telephone logs, briefing/application documents, electronic mail, and notes documenting any communication (regardless of physical form or characteristics). “NMFS” should be interpreted to include the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service/NOAA Fisheries.

Expedited Processing

I respectfully submit that this request meets the criteria for expedited processing under applicable regulations (15 C.F.R. § 4.6(f)) because the requestor is primarily engaged in disseminating information and has established below that the request is urgently needed to inform the public concerning some actual or alleged government activity. As explained in the following section, Ocean Conservancy is a public interest organization and will disseminate the information to the public and our members via media channels such as our website, blog, and newsletters. The matter in question is of widespread and exceptional media interest and involves questions about the government’s integrity which affects public confidence.

This information will allow the public to gain a complete understanding of the government’s rationale and data upon which it has based its management decisions. This request is urgent because the temporary rule is only in effect for a matter of months and is not subject to any form of public comment. Delay will be detrimental to the public resource and to the public’s understanding of this decision by the agency.

Fee Waiver Requested

Ocean Conservancy is willing to pay up to \$500 to fulfill this records request. However, we request a waiver of any fees associated with this request that exceed \$500. FOIA mandates that agencies waive or reduce search and copying fees where the disclosure 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).

In addition to the statutory direction, the U.S. Department of Commerce has issued regulations outlining factors that it considers in deciding whether a fee waiver is warranted: (1) the request concerns the operations or activities of the government; (2) the disclosure will have value to the public and will likely contribute to public understanding of government operations or activities; (3) the disclosure will

contribute significantly to public understanding; (4) the disclosure is not primarily in the requester's commercial interest. See 15 C.F.R. § 4.11(k).

As one court explained, if a non-profit organization has "identified why they wanted the administrative record, what they intended to do with it, to whom they planned on distributing it, and the [relevant] expertise of their membership," then a waiver is appropriate. *Ctr. for Biological Diversity v. Office of Mgmt. & Budget*, 546 F. Supp. 2d 722, 727 (N.D. Cal. 2008) (internal quotation omitted). The information provided below demonstrates that Ocean Conservancy meets the required criteria and are entitled to a full fee waiver.

1. The Request Concerns the Operations and Activities of the Government.

This FOIA request seeks information relevant to NMFS's management of red snapper in the Gulf of Mexico reef fish fisheries. Accordingly, the FOIA request directly concerns the operations and activities of the government in managing and protecting public resources managed by NMFS. This request will enable Ocean Conservancy to evaluate the strength of and basis for the agency's decisions regarding red snapper management. Accordingly, the FOIA request directly implicates the operations and activities of the government in managing public resources in the Gulf of Mexico.

2. The Requested Information Has Value to the Public and Will Likely Contribute to Public Understanding of Government Operations or Activities.

There is a direct connection between the requested records and NMFS's operations and activities in managing red snapper. The requested records relate to the government's evaluation of red snapper catch, the private recreational season, annual catch limits, and accountability measures. Access to these records will allow Ocean Conservancy to evaluate NMFS's red snapper catch estimations for the private recreational fishery. Consequently, the requested documents are critical to a meaningful assessment of the agency's actions and a thorough public understanding of the government's operations and activities in regulating the recreational fishery.

While the final and temporary rules regarding red snapper are available to the public, the data, documents, and communications requested by Ocean Conservancy are not. The requested documents are necessary for the public to gain a complete understanding of the government's rationale and data upon which it has based its management decisions. This information is critical to assessing the government's actions in protecting this public resource. Accordingly, disclosure of the requested information will contribute significantly to public understanding of the government's operations and activities with respect to this fishery.

Ocean Conservancy is a public-interest organization whose core mission involves using science, law, and policy to protect the world's oceans by, among other mechanisms, monitoring government management of public resources, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. Ocean Conservancy's experts will scrutinize the scientific underpinnings of the requested documents; these analyses will form the basis for responding to NMFS's management decisions and educating the public. See *Friends of the Coast Fork v. U.S. Dep't of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997).

Ocean Conservancy also intends to disseminate information that may be available in the requested records through various means, including newsletters, reports, newspaper and magazine articles,

electronic action alerts, web sites, and through other formal and informal communications. These types of public outreach are sufficient to warrant a fee waiver. *See W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) (noting cases holding “statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public sufficient to entitle an organization to a fee waiver”).

Ocean Conservancy possesses the experience and expertise necessary to evaluate the requested information and provide it to the public in a useful form. *Cf. W. Watersheds Proj.*, 318 F. Supp. 2d at 1040-41. Ocean Conservancy is highly qualified to extract, synthesize, analyze, and convey the requested information to its members, other organizations, and the public at large in a way that will increase understanding of government actions affecting red snapper and fisheries in the Gulf of Mexico. Ocean Conservancy has a long history of evaluating information similar to that requested here and distributing it to help inform the public and encourage participation in future planning processes.

Since 1972, Ocean Conservancy has sought to improve the health of our nation’s marine wildlife and fish. To that end, and as part of its organizational goals, Ocean Conservancy seeks to prevent degradation of marine habitats and end overfishing—catching more fish than the remaining population can replace. Ocean Conservancy aims to help restore and sustain fisheries by restoring depleted fish populations and supporting sustainable long-term management.

Ocean Conservancy has gained a detailed understanding of the issues surrounding the management of Gulf red snapper. In the 1990s, Ocean Conservancy became involved in the red snapper fishery. For the past three decades, Ocean Conservancy has worked to promote a healthy red snapper stock so that the resource can be used for generations to come. Ocean Conservancy staff has attended meetings of the Gulf of Mexico Fishery Management Council meeting for decades and has been thoroughly engaged in red snapper management in recent years.

Moreover, Ocean Conservancy staff and members have participated extensively in the relevant public processes involving red snapper management over the last decade, by, among other things, submitting comments to NMFS and the Gulf of Mexico Fishery Management Council concerning the management of red snapper and the protection of marine life in the Gulf ecosystem.

3. The Disclosure Will Contribute Significantly to Public Understanding.

Disclosure of these records will further the understanding of the public at large and is likely to be of interest to a broad audience. Ocean Conservancy is a public-interest organization whose core mission is to protect the environment, public resources, and human health by, among other mechanisms, monitoring government management of marine waters, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. The records will further both the organization’s and members’ understanding of red snapper catch, abundance, and management in the Gulf of Mexico.

Issues involving red snapper season length in the Gulf of Mexico are of significant public interest and have been the subject of significant public discourse as well as NMFS and Gulf of Mexico Fishery Management Council processes. The requested disclosure will significantly increase public understanding of NOAA’s operations and activities pertaining to this public resource.

Ocean Conservancy's headquarters is located in Washington, D.C., and Ocean Conservancy has additional offices in key U.S. coastal areas. Ocean Conservancy's website and publications educate its over 130,000 members and supporters and the public regarding marine conservation and fishery management.

These records will provide information underlying the agency's decision-making, afford insight into the agency's decision-making processes, and highlight any competing viewpoints. These records will allow the requester to evaluate the agency's decision-making and the adequacy of the analyses, thereby facilitating public oversight of agency operations.

Ocean Conservancy and other members of the public have participated actively in efforts to rebuild red snapper and address fishery overages. Ocean Conservancy will use information gained through this FOIA request to inform its participation in fishery management council meetings, comments to the agency, and as a basis for evaluating the analyses and conclusions of the agency's red snapper management decisions.

4. Ocean Conservancy Has No Commercial Interest in the Disclosure of the Information.

Ocean Conservancy is a § 501(c)(3) tax-exempt nonprofit advocacy organization dedicated to protecting the ocean from today's greatest global challenges. Together with our partners, we create science-based solutions for a healthy ocean and the wildlife and communities that depend on it. The requester is a nonprofit organization that has no commercial interest in the requested records. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requestors" (quoting legislative history)).

5. Ocean Conservancy Is a Media Representative.

Members of the news media are entitled to waivers of search fees. 5 U.S.C. § 552(a)(4)(A)(ii)(II); 43 C.F.R. § 2.39(a). A representative of the news media includes "publishers of periodicals . . . who make their products available for purchase by or subscription by or free distribution to the general public." 5 U.S.C. § 552(a)(4)(A)(ii)(III); 43 C.F.R. § 2.70. News media broadly disseminate "information that is about current events or that would be of current interest to the public." *Id.* The waiver extends to a nonprofit organization that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (quoting 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)); *Cause of Action v. FTC*, 799 F.3d 1108, 1115-17 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr. V. Dep't of Def.*, 241 F. Supp.2d 5, 12 (D.D.C. 2003).

Ocean Conservancy functions as a member of the news media because it regularly gathers, publishes, and disseminates information to the public. Ocean Conservancy has 130,000 members. Ocean Conservancy gathers, synthesizes, and publishes information and news concerning marine conservation which it broadly disseminates to its membership and the press through its website and blog, press releases, quarterly print publication which it distributes to 115,000 households, and regular email newsletter which it distributes to its over 800,000 members and supporters. *Cause of Action*, 799 F.3d at 1124 (for the news-media provision, an organization's website, newsletter, press releases, and press contacts will be considered in combination); *Judicial Watch v. U.S. Dept. of Justice*, 133 F. Supp. 2d 52, 53-4 (D.D.C. 2000) (website that disseminated information and radio show were sufficient to establish

status of representative of media) 22 880 F.2d at 1387 (quoting 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)); 241 F. Supp. 2d at 14 n.6 (noting that newsletter that was "published regularly, over a period of time, and . . . disseminate[d] actual 'news' to the public" was evidence that nonprofit organization was a member of the news media).

As provided by 5 U.S.C. § 552(a)(6)(D), we look forward to a reply within ten (10) working days. If the agency chooses to withhold certain documents from disclosure pursuant to FOIA exemptions, we request that it: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (ii) explain in full the basis on which non-disclosure is justified; and (iii) provide us with any segregable portions of the documents for which a specific exemption is not claimed.

Please contact me if you have any questions, or if I can clarify this request in any way. I can be reached at 503-896-1171. Thank you in advance for your assistance.

Sincerely,

s/ Ivy Fredrickson
Staff Attorney
Ocean Conservancy
1300 19th St., NW, 8th Floor
Washington, DC 20036
ifredrickson@oceanconservancy.org

Jackie Rolleri - NOAA Federal

From: Jackie Rolleri - NOAA Federal
Sent: Wednesday, June 21, 2017 2:30 PM
To: Mark Graff - NOAA Federal
Subject: draft FOIA response - please review
Attachments: FOIA 2017-001393 Full Release Letter_draft (6-21-17).docx

Hi Mark,

Thanks for your advice earlier (b)(5)

[REDACTED]

[REDACTED]

Thanks,
Jackie

--

Jackie Rolleri, Attorney-Advisor
Oceans and Coasts Section
Office of the General Counsel
National Oceanic and Atmospheric Administration
1305 East-West Highway
SSMC4, Suite 6111
Silver Spring, MD 20910
301-713-7387 (office)
(b)(6) (cell)

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(b)(5)

(b)(5)

(b)(5)

Beverly Smith - NOAA Federal

From: Beverly Smith - NOAA Federal
Sent: Wednesday, June 21, 2017 5:17 PM
To: Steven Goodman - NOAA Federal; Mark Graff - NOAA Federal; Samuel Dixon - NOAA Affiliate
Cc: Beverly Smith
Subject: 14TH Interim Response Tasked - DOC-NOAA-2015-000295 Barnes
Attachments: 2015-000295 14the response letter.FO.pdf; Generic_tasker_14th interim response.pdf

(b)(5)

[REDACTED], I have attached the response letter and NOAA tasker.

Thanks.
Beverly J. Smith
FOIA Coordinator
Southeast Region
NOAA's National Marine Fisheries Service
727-551-5762



UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701-5505

<http://sero.nmfs.noaa.gov>

VIA FOIAONLINE

F/SER14:BJS

SER15-012

FOIA #DOC-NOAA-2015-000295

Jennifer Barnes
Staff Attorney
Friends of Animals
Western Region Office
7500 East Arapahoe Road, Suite 385
Centennial, Colorado 80112
jenniferbarnes@friendsofanimals.org

JUN 02 2017

RE: Freedom of Information Act (FOIA) Request #DOC-NOAA-2015-000295

Dear Ms. Barnes:

This letter is in response to your FOIA request #DOC-NOAA-2015-000295 dated November 21, 2014, and received in our office on November 25, 2014. You specifically requested the following information:

- All records considered by the National Marine Fisheries Service (NMFS) in determining that the queen conch (*Strombus gigas*) does not warrant listing under the Endangered Species Act (ESA).
- Please provide all records in your possession, whether received, created, and/or distributed by NMFS, that the agency considered in making the initial positive 90-day finding on the petition, as well as the final not warranted 12-month finding with respect to the Queen conch.
- This request also includes any records received, created, and/or distributed by NMFS prior to receipt of the WildEarth Guardians listing petition, as well as any records received, created, and/or distributed by NMFS from the period between receipt of the WildEarth Guardians petition through the status review and ESA decision-making process up to the point that NMFS issued the final not warranted 12-month finding.
- Please include in your response the complete list of all references cited in the decision published at 79 *Fed. Reg.* 65628 (Nov. 5, 2014), as well as the peer reviews cited in that decision.
- This request does not include NMFS records that have been published online and made available to the public.

Request Scope Clarification and Modification

Pursuant to your telephone conversations with Stephania Bolden, Ph.D., Branch Chief, and Calusa Horn, Biologist, Southeast Region (SER) Protected Resources Division, and Beverly J.



Smith, Southeast Region FOIA Coordinator, you clarified and modified the scope of your request on December 5 and 10, 2014, as follows:

- 1) You seek the administrative record and e-mails on the listing petition decision. NMFS's administrative record, antecedent to litigation, is termed our program decision file that contains the records related to the decision on the petition.
- 2) You clarified that the portion of your request that states, "...any records received, created, and/or distributed by NMFS prior to the receipt of the WildEarth Guardians listing petition...." is for information that NMFS considered regarding the status of the species at the time of the petition.
- 3) You seek a list of references, as opposed to copies of the publications, cited in the decision. However, if the publications cited in the decision are not publicly available, you would like copies of those publications (December 10, 2014, clarification).
- 4) You seek copies of the peer reviews cited in the decision that includes communications with scientists and other groups when making the decision. This is further discussed below under Search - Key Groups of Individuals.
- 5) You expanded the scope to include a list of the records that are publicly available on line, and therefore, excluded from the response.

Search - Key Core Group of Record Custodians

During the conference call, we also discussed that certain NMFS's Southeast Region and Office of Protected Resources, and Southeast Fisheries Science Center staff will have records responsive to the request regarding the decision, including Extinction Risk Analysis group information, and NMFS's headquarters' offices will have records responsive to Convention on International Trade in Endangered Species (CITES) information. The list of key record custodians is as follows:

Southeast Region, Protected Resources Division:

David Bernhart, Assistant Regional Administrator
Robert Hoffman, Branch Chief, Sea Turtle Conservation
Stephania Bolden, Branch Chief, Species Conservation
Calusa Horn, Biologist, Species Conservation

Southeast Region, Sustainable Fisheries Division, Limited Access Privilege Programs/Data Management:

Andrew Strelcheck, Branch Chief
Nick Farmer, Fishery Biologist

Southeast Fisheries Science Center, Sustainable Fisheries Division:

Clay E. Porch, Director

NMFS Headquarters:

Office of Protected Resources:

Angela Somma, Chief, Endangered Species Division
Dwayne Meadows, Biologist/National Coordinator Species of Concern Program
Marta Nammack, National ESA Listing Coordinator

Office of International Affairs (CITES information):

Nancy K. Daves
Laura Faitel Cimo

You agreed to limit the search to the above-listed individuals, and acknowledged that you may make additional FOIA requests in the future, if you deem it necessary.

Modified Scope

On July 2, 2015, pursuant to your telephone call with Ms. Smith, you agreed to exclude 5 U.S.C. 552 (b)(6) information, which protects information that would cause a clearly unwarranted invasion of personal privacy, such as a personal telephone number or a personal home address.

We have provided the following interim responses to you:

- **3,640 pages and 3 Excels** were released in full on February 20, 2015.
- **4,162 pages** were released in full on June 4, 2015.
- **1,443 pages and 21 Excels** were released on July 8, 2015, with 1,442 pages and 21 Excels released in full and a portion of **one page** contained an exemption (b)(6) redaction.
- **12,605 pages and 9 Excels** were released on September 14, 2015.
- **1,210 pages and 12 Excels** were released in full on May 11, 2016.
- **1,016 pages** were released in full on January 26, 2017.
- **5,417 pages and 18 Excels** were released in full on February 01, 2017.
- **7,366 pages and 36 Excels** were released on March 1, 2017, with 7,348 pages and 36 Excels released in full and portions of 18 pages contained exemption (b)(6) redactions.
- **2,297 pages** were released in full on March 14, 2017.
- **2,772 pages** were released on March 23, 2017, and portions of 37 pages contained exemption (b)(6).
- **1,772 pages and 26 Excels** were released in full on May 2, 2017.
- **2,754 pages and 8 Excels** were released in full on May 12, 2017.
- **352 pages** were released in fully on May 31, 2017.

This is a 14th interim response of **338 pages** that are released in their entirety. The records are available to you via FOIAonline. Please note that NMFS does not consider discretionary release to be a waiver of FOIA exemptions.

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](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:

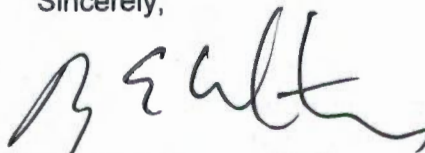
Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov

Phone: 202-741-5770
Fax: 202-741-5669
Toll-free: 1-877-684-6448

We continue to review and process a voluminous amount of responsive materials. If you have questions regarding this correspondence, please contact Ms. Smith at beverly.smith@noaa.gov or by phone at 727-551-5762, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,



Roy E. Crabtree, Ph.D.
Regional Administrator



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

November 25, 2014

MEMORANDUM FOR: Joan Moumbleaux – NMFS

FROM: Lola Stith
NOAA FOIA Office

SUBJECT: FOIA Request No. DOC-NOAA-2015-000295

I am forwarding a copy of the attached FOIA request for your immediate attention. Please produce one, or two in the case of withheld documents, set of all documents (retain your originals in accordance with the proper record schedule) that may be responsive to the request and upload into FOIAonline. If processing outside of the FOIAonline system, print a set to send to the FOIA requester. If any documents or parts of documents are withheld, you must keep both the unredacted and redacted versions in FOIAonline with rare exceptions. These documents may include final documents, drafts, notes, informal records, and electronic records. You must search every place that could reasonably be expected to have responsive documents. The search must be documented.

Make sure that you identify any documents or portions of documents that originated with another office, agency or bureau that need to be referred for disclosure determinations.

One set of copies (not original documents) should be produced without additional annotation; on the second set, please identify whether you believe the document, or any portion of it, should be withheld from disclosure because it is not an agency record, outside the scope of the request, privileged, confidential, an invasion of personal privacy, or for any other legitimate reason recognized by FOIA. You must include the FOIA exemption next to any information you identify as protected from disclosure. Please ensure that the information withheld under FOIA is **securely redacted**. The office that originated a document must make disclosure determinations for that document.

The search period to November 25, 2014. Documents created after this date are not responsive to the request.

Refer to FOIA Exemptions for Tasker Memo (http://www.corporateservices.noaa.gov/~foia/sample_letters/) for list of FOIA exemptions for your use in making disclosure determinations.

In order to complete this request in a timely manner, please respond to the requester by **December 24, 2014**.

In accordance with the NAO (http://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_205/205-14.html) Lead Office, please upload the close-out letter and the completed Tasker (this document) into FOIAonline (<https://foiaonline.regulations.gov>) within one day of completion. Select NOAA FOIA Office (search for "FOIA" as an individual) as the final reviewer.

Please include in the FOIAonline file documentation of (attached form acceptable):

- 1) Which office(s) originated the documents.
- 2) How the search was conducted (e.g., which data base searched and the search terms). Contact the FOIA Liaison or Office of General Counsel for suggestions and clarification.
- 3) Who in the originating office made the disclosure determination(s).

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Do not hesitate to contact me at (301) 628-5658 if you have any questions.

Please sign this sheet of paper and check **all** of the appropriate boxes.

My office closed this request due to non-payment of fees or requester's failure to respond to correspondence or _____.

My office copied for our files and transmitted to the requester all documents in our possession that are responsive and can be released in entirety. **14th interim response, 338 pages.**

My office copied, noted the exemption, and held all documents in our possession which are responsive and we have found reason to partially withhold.

My office copied, noted the exemption, and held all documents in our possession which are responsive and we have found reason to withhold entirely.

My office referred all documents in our possession which are responsive to the originating office, bureau, or federal agency for disclosure determination(s).

My office conducted a search and the records are available online.

My office conducted a search and did not find any responsive documents.

A foreseeable harm review and analysis was not applicable.

A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld materials would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. If Foreseeable Harm checklist is not provided in FOIAonline, provide the name of the person who completed the foreseeable harm review and analysis

_____.

Check **all** exemptions that apply:

(b)(4)

(b)(6)

Interim response

Final response

**Beverly J. Smith,
FOIA Coordinator**

Digitally signed by Beverly J. Smith, FOIA Coordinator
DN: cn=Beverly J. Smith, FOIA Coordinator, o=NMFS
Southeast Regional Office, ou=NMFS/SERO/OMI/CS,
email=beverly.smith@noaa.gov, c=US
Date: 2017.06.21 17:05:05 -04'00'

FOIA Coordinator

Date

See attached concurrence clearance

Signature (Senior Official)

Date

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, June 22, 2017 8:05 AM
To: Toland, Michael; FOIA, Electronic
Cc: Dennis Morgan - NOAA Federal; Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: BOU Weekly FOIA Report for DOC
Attachments: BOU Weekly FOIA Report 06.14.17 - 06.20.17.xls

Hi Mike,

Attached is this week's BOU FOIA Report from NOAA.

The requests are summarized as follows:

DOC-NOAA-2017-001394--Ocean Conservancy is seeking records about the decision to extend the red snapper season. This got some press coverage and the requester is specifically seeking records involving NOAA and Commerce leadership.

DOC-NOAA-2017-001391--The Association for Professional Observers is seeking a summary of threats or harassment against observers from 2013-2016.

DOC-NOAA-2017-001390--The Association for Professional Observers is seeking records regarding a specific alleged incident of harassment of an observer in 2003 on board the US-flagged Patagonia Toothfish longline vessel owned by PacFish Inc.

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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BOU Weekly FOIA Report
Wednesday 6/14-Tuesday 6/20

Tracking Number	Received	Requester	Requester Organization	Submitted
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DOC-NOAA-2017-001394	6/19/2017	Ivy Fredrickson	Ocean Conservancy	6/19/2017
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DOC-NOAA-2017-001391	6/16/2017	Elizabeth Mitchell	Association of Professional Observers	6/19/2017
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DOC-NOAA-2017-001390 6/16/2017 Elizabeth Mitchell Association for Professionals 6/16/2017

Detail

We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, electronic mail records, or other documents, which were generated, received, kept, and/or considered by NMFS relating to the reopening of the red snapper season, between the dates of January 20, 2017 and June 19, 2017. This includes documents, records, and materials regarding:

1. extension or reopening of the private recreational red snapper season;
2. how or whether this action would affect progress toward rebuilding under the red snapper rebuilding plan;
3. how or whether this action may cause or contribute to overfishing; and
4. data, computations, or any other analysis used to determine the number of days the season would be open.

We request documents, records, and materials pertaining to the above enumerated subjects involving, but not limited to, the following people:

1. Wilbur Ross
2. Samuel Rauch
3. Alan Risenhoover
4. Roy Crabtree
5. Andy Strelcheck
6. George Kelly
7. Earl Comstock
8. Bonnie Ponwith
9. Patrick Lynch
10. Emily Menashes
11. Benjamin Friedman
12. Lindsey Kraatz

Through the Freedom of Information Act, I request the following documents: A summary of all complaints of violence, threats, or harassment against fisheries observers in US fisheries observer programs that occurred in calendar year 2013, 2014, 2015, and 2016, separated by: 1. Year; 2. Whether the complaint was initiated by the observer or by observer program staff; 3. Date of complaint; 4. Observer program from which the observer was deployed; 5. Nature of the complaint (e.g. assault, sexual assault, harassment, verbal abuse, intimidation, interference, lack of assistance, death, or other type of threat); 6. What, if any, outcomes stemmed from each complaint (e.g., arrest, conviction, ongoing investigation). If any portion is redacted, I request that at least the region be revealed.

Through the Freedom of Information Act, I request the following documents: 1. E-mails, photographs and possibly faxes and other communications before and after and relating to my observer trip on board the America No. 1, a US-flagged Patagonia Toothfish longline vessel then owned by Lawrence Lasarow, PacFish, Inc. I met the vessel in Spain September 28, 2003, sailed for the Southern Ocean to test CCAMLR seabird mitigation measures to be confirmed prior to entry into a CCAMLR Ross Sea experimental fishery. My time on board this vessel was from September 28, 2003 through approximately November 27, 2003. The time frame of communications I request is from August 1, 2003 until August 1, 2005. I request e-mails, faxes or other communications, from this time period, to and from myself to DOC employees - Chris Jones (SWFSC); Robin Tuttle; Teresa Turk; NOAA OLE; Paul Ortiz (Office of General Counsel); Frank Sptel (Deputy General Counsel); Mike Gonzales (OLE); Brett Schneider (OLE). E-mails pertaining to my deployment to and from NOAA and Lawrence Lasarow (Seaport Management Services, LLC; PacFish, Inc) , German Munoz (Chile), and any officials in Spain. 2. I request any investigation reports or communications relating to my harassment while on board, the data I collected, and the reports filed. Other potential names of persons involved are: Hennie Crous, Lawrence Lasarow, and Joe D'Alfio. 3. I request the 2003 consent decree between NOAA and Mr. Lawrence Lasarow's company, PacFish, Inc. and any other legal documents associated with this particular trip. 4. I request any documents relating to NOAA's presentations at the CCAMLR meeting, CCAMLR-XXII.

Category	Comments
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Public Interest/Special Interest	Records specifically are sought pertaining to named Bureau and Department leadership. This issue has been in the news multiplied times (http://www.newschannel10.com/story/35647812/federal-red-snapper-season-could-reopen-but-with-a-catch). See also http://www.sportfishingmag.com/gulf-red-snapper-federal-season-reopens .
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Public Interest/Special Interest	This is a repeat request, and we routinely receive similar requests seeking the same material. This organization is likely maintaining comparative trends, and historical data on this issue.
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This is a specific request for an incident of harassment. Because the requester is familiar with the incident, they also will likely have a more complete knowledge of locations where responsive records are likely to be found and are more prone to raise a search adequacy challenge if the search is deficient.

Public Interest/Special Interest

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, June 22, 2017 9:08 AM
To: Samuel Dixon - NOAA Affiliate; Stacey Nathanson - NOAA Federal; Steven Goodman - NOAA Federal
Cc: Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate; Jerenda Burroughs - NOAA Affiliate; Amy Sloan - NOAA Federal; Mary O'Brien - NOAA Federal; Jennifer Skidmore - NOAA Federal
Subject: Consultations and (b)(5) Training
Attachments: Consultations Referrals and (b)(5).pptx

Hey Guys,

As we'd discussed, attached is a draft slide deck for the training next Monday. Any issues you can see? There is some new material in here, although most of it was previously presented in 2 different legal experts calls, so you'll recognize the content and the case citations I have in the speaker's notes.

How long do you want me to take going through this? There are a lot of cases referenced here that I can go through in-depth to add value, so I can stretch or shorten the presentation as much as you'd like--just let me know.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
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(b)(6) (C)

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Referrals, Consultations, and Exemption (b)(5) Deliberative Process

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief
Privacy Officer
OCIO/GPD

mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Regulatory Structure for Referrals
2. The Risks of External Equities
3. OIP Guidance
4. (b)(5) Two Prong Test
5. The Extent of the Privilege
6. Questions



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

“Where a component's FOIA office determines that a request was misdirected within the Department, the receiving component's FOIA office shall route the request to the FOIA office of the proper component(s). Records responsive to a request shall include those records within the Department's possession and control as of the date the Department begins its search for them.”



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

“(T)he proper component of the Department to respond to a request for records is the component that first receives the request and has responsive records (or in the instance of where no records exist, the component that first receives the request and is likely to have responsive records), or the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.”



Regulatory Structure (Cont'd)



CONSULTATIONS:

"In instances where a record is requested that originated with the Department and another Federal agency has a significant interest in the record . . . the component shall consult with that Federal agency before responding to a requester."





Regulatory Structure (Cont'd)



REFERRALS:

“When a component receives a request for a record (or a portion thereof) in its possession that originated with another Federal agency subject to the FOIA, the component shall refer the record to that agency for direct response to the requester.”





The Risks of External Equities



There are at least 7 different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.



The risks of External Equities (Cont'd)



3. Records in which all or part of the record requires a declassification review by the original classifying authority.
4. External Consultations for providing withholding recommendations to another agency
5. Intra-Departmental taskings requiring a tasking Memorandum



The risks of External Equities (Cont'd)



5. External Litigation consultations seeking NOAA's asserted exemptions
6. Referrals asking for non-attribution



OIP Guidance



FIRST DETERMINE IF IT IS AN AGENCY RECORD.

This definition excludes documents originating with Congress, many White House records, many Judicial Records, certain Presidential Communications, and personal records.



OIP GUIDANCE (Cont'd)



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the “proper party defendant,” but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”



OIP Guidance (Cont'd)



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act. While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



(b)(5) Two Prong Test



- **When (b)(5) Deliberative Process Applies:**
- (b)(5) Statute generally protects: “Inter and intra-agency” communications that would not be available by law to a party other than an agency in litigation with the agency”. Courts define this as only documents that are normally privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



- As to one of those privileges, Deliberative Process Privilege includes:
 - Inter-agency and Intra-agency communication requirement encompasses “consultant corollary”. If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party
 - Seeking benefit at the expense of other applicants. If yes, no (b)(5) protection.



(b)(5) Two Prong Test (cont'd)



- Two Part Test:
 - Is the material pre-decisional, i.e., antecedent to the adoption of the agency policy? and
 - Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters.



The Extent of the Privilege



- Policy behind DPP:
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion



The Extent of the Privilege



- Inter-agency and Intra-agency communication requirement encompasses “consultant corollary”
- If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
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If yes, there is no (b)(5) protection.



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a Risk of Harm must exist for the Privilege to apply. Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.





The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process. After that time—the privilege no longer applies.





Questions



QUESTIONS?

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, June 22, 2017 4:23 PM
To: Stacey Nathanson - NOAA Federal; Samuel Dixon - NOAA Affiliate
Cc: Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Revised Slide Deck
Attachments: Consultations Referrals and (b)(5).pptx

Hey Guys--

Here it is revised with NOAA-specific examples in the "Other-Agency-Docs" section. This should be good to go, and I'll share this in Google Docs as well.

Mark H. Graff
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Referrals, Consultations, and Exemption (b)(5) Deliberative Process

Prepared by Mark H. Graff
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Privacy Officer
OCIO/GPD

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Freedom of Information Act (5 USC 552)



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"In instances where a record is requested that originated with the Department and another Federal agency has a significant interest in the record . . . the component shall consult with that Federal agency before responding to a requester."





Regulatory Structure (Cont'd)



REFERRALS:

“When a component receives a request for a record (or a portion thereof) in its possession that originated with another Federal agency subject to the FOIA, the component shall refer the record to that agency for direct response to the requester.”





The Risks of Other Agency Docs



There are at least 7 different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.



The Risks of Other Agency Docs



2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.



The Risks of Other Agency Docs (Cont'd)



3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.



The Risks of Other Agency Docs (Cont'd)



4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council
Records found within our Control



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.



The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.



The Risks of Other Agency Docs (Cont'd)



NAO 205-14: NOAA FOIA Taskings

There are at least 6 types of taskings—it must be clear which type you are being asked to review:

- Conduct a search for responsive records (fees waived or non-billable)
- Prepare a fee estimate in a non-referral
- Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
- Review referred records and provide release recommendations to the referring entity
- Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
- Respond to an adjudication on appeal



OIP Guidance



WHEN REVIEWING A RECORD, FIRST DETERMINE IF IT IS AN AGENCY RECORD.

This definition excludes documents originating with Congress, many White House records, many Judicial Records, certain Presidential Communications, and personal records.



OIP GUIDANCE (Cont'd)



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the “proper party defendant,” but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”



OIP Guidance (Cont'd)



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act. While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



(b)(5) Two Prong Test



- **When (b)(5) Deliberative Process Applies:**
- (b)(5) Statute generally protects: “Inter and intra-agency” communications that would not be available by law to a party other than an agency in litigation with the agency”. Courts define this as only documents that are normally privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



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(b)(5) Two Prong Test (cont'd)



- Two Part Test:
 - Is the material pre-decisional, i.e., antecedent to the adoption of the agency policy? and
 - Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters.



The Extent of the Privilege



- Policy behind DPP:
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
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The Extent of the Privilege



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- If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
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If yes, there is no (b)(5) protection.



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a Risk of Harm must exist for the Privilege to apply. Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.





The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process. After that time—the privilege no longer applies.





Questions



QUESTIONS?

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, June 22, 2017 5:22 PM
To: Stephen Lipps - NOAA Federal; Holmes, Colin; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal; Jeff Dillen - NOAA Federal; Kristen Gustafson - NOAA Federal; Robert Hogan
Cc: Tom Taylor; Kimberly Katzenbarger - NOAA FEDERAL; Charles; Dennis Morgan - NOAA Federal; Stacey Nathanson - NOAA Federal; Robert Swisher - NOAA Federal; Steven Goodman - NOAA Federal; Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Zachary Goldstein - NOAA Federal; Douglas Perry - NOAA Federal; Nkolika Ndubisi - NOAA Federal; Jeri Dockett - NOAA Affiliate; Cc: OCIO/OPPA; Troy Wilds - NOAA Federal; Lawrence Charters - NOAA Federal; Allison Soussi-Tanani - NOAA Federal; Bogomolny, Michael (Federal); Roxie Allison-Holman - NOAA Federal; John Almeida - NOAA Federal
Subject: Weekly FOIA Incoming and High Visibility Requests
Attachments: FoA v NOAA - Stipulation of Settlement and Dismissal 1.pdf; PEER v. NOAA.pdf; NRDC v. EPA_ Complaint.pdf; Weekly FOIA Incoming and High Visibility Requests 06.14.17 - 06.21.17.xls

Good Evening,

Attached is the weekly report.

One request was received from Ocean Conservancy that is seeking records about the decision to extend the red snapper season. This subject received some press coverage and the requester is specifically seeking records involving NOAA and Commerce leadership. (NOAA-2017-001394).

Also, two requests were received from The Association for Professional Observers. Those requests seek, respectively, reports of threats of violence or harassment of observers generally over a 4 year period, as well as a request regarding one alleged incident of harassment of an observer in 2003 on board the US-flagged Patagonia Toothfish longline vessel owned by PacFish Inc. (DOC-NOAA-2017-001390 and DOC-NOAA-2017-001391).

In litigation, in the *PEER v. NOAA* cas (b)(5) [REDACTED] [REDACTED]. In the *Friends of Animals* Litigatio (b)(5) [REDACTED] [REDACTED]. (A copy of the underlying settlement dismissal and production schedule is attached).

Also, NOAA was sued under the FOIA by the National Resources Defense Council, along with 10 other Agencies and Bureaus, in the Southern District of New York. The original request sought communications between the named Federal Agencies and the Presidential Transition Team. The cause of action raised was constructive denial. (A copy of the underlying complaint is attached).

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(b)(6) [REDACTED] (C)

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

Civil Action No. 16-cv-03007-DME-MJW

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION,

Defendant.

STIPULATION OF SETTLEMENT AND DISMISSAL

Plaintiffs Friends of Animals and Sea Shepherd Legal (“Plaintiffs”) and Defendant National Oceanic Atmospheric Administration, an agency of the United States Department of Commerce (“Defendant”) (collectively, the “Parties”), by and through their undersigned counsel, hereby enter into this Stipulation of Settlement and Dismissal (“Stipulation”) in the above-captioned case. Specifically, the Parties stipulate and agree as follows:

RECITALS

1. On April 12, 2016, Plaintiffs submitted a Freedom of Information Act request to Defendant seeking records on thirteen topics that pertained to human activities impacting the Cook Inlet beluga whale. *See* Friends of Animals’ FOIA Request for Records, attached as Ex. 1 at 2-3.

2. On May 16, 2016, Defendant extended its response deadline of May 12, 2016

by ten business days for unusual circumstances.

3. Defendant made three interim releases responsive to Plaintiffs' request on June 9, July 26, and October 21, 2016.

4. On December 8, 2016, Plaintiffs filed the instant civil action.

5. On or about February 27, 2017, the Parties reached an agreed upon schedule of production for the remaining responsive records and the terms of settlement.

STIPULATION

1. Plaintiffs agree to dismiss the instant civil action without prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

2. In consideration for Plaintiffs' agreement to Paragraph 1 above, Defendant shall pay Plaintiffs the amount of four thousand ninety dollars (\$4,090.00), in full and complete satisfaction of Plaintiffs' claims for the attorneys' fees and litigation costs incurred in the above-captioned case. In the event of further litigation, Plaintiffs will not be entitled to claim any attorneys' fees or costs incurred prior to this settlement.

3. Defendant shall make payment of the total settlement amount, set forth in Paragraph 2 above, by electronic transfer of funds to Plaintiffs within forty-five (45) days of the dismissal of the above-captioned case (Plaintiffs' electronic funds transfer information will be provided separately). Plaintiffs' counsel shall cooperate with Defendant to ensure that all documentation required to process this payment is complete and accurate and submitted sufficiently in advance to allow for payment processing within forty-five days of dismissal.

4. Defendant shall release documents responsive to Plaintiffs' FOIA request in accordance with the following production schedule:

4.1 Defendant will produce a set of records **by March 14, 2017** that Defendant finds are responsive to topics (3) and (4) of the FOIA request. *See* Ex. 1 at 2. In a release letter accompanying this production, NOAA agrees to include a statement from the Assistant Administrator for National Marine Fisheries Service (“NMFS”), a division of NOAA, that describes how the search was reasonably calculated to uncover all responsive documents. The statement will describe which files were searched, the search method(s) used (electronic, manual, etc.), the locations searched, and the topics and terms searched. Further, in the release letter for the production of records responsive to topics (3) and (4), NMFS will provide a description of the methods used to segregate records NMFS found to be responsive to topics (3) and (4).

4.2 NOAA will produce a second set of records **by May 1, 2017**. This set of records will include responsive records that were not produced in prior releases to Plaintiffs.

4.3 NOAA will produce a third set of records **by August 1, 2017**. This set of records will include responsive records that were not produced in prior releases to Plaintiffs.

4.4 NOAA will produce a Vaughn Index for documents withheld pursuant to an applicable FOIA exemption in paragraphs 4.1, 4.2, and 4.3 **by August 31, 2017**.

4.5 NOAA will produce a final set of records **by September 30, 2017**. This set of records will include documents for the time period of April 12, 2016 (the date of the initial FOIA request) to December 31, 2016 that are responsive to the topics in the FOIA request.

4.6 In the event that Plaintiffs take issue with any of Defendant’s actions outlined in terms 4.1 to 4.5 above, Plaintiffs will promptly notify the undersigned counsel and/or an agreed upon NOAA contact of all such issues. The Parties agree to work together in good faith

to resolve such issues. If the Parties are unable to resolve any such issues within 45 days of Plaintiffs first presenting the issues to Defendant, Plaintiffs may pursue all available remedies in court. Plaintiffs shall have until **January 30, 2018** to present NOAA with any issues concerning the release of documents in paragraphs 4.1 to 4.5 above.

5. This Stipulation of Settlement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, the United States Department of Commerce, the National Oceanic Atmospheric Administration, their agents, servants, employees, or officers, and is entered into by the Parties for the purpose of compromising disputed claims and avoiding the expense and risks of further litigation. The Parties' agreement to this settlement is without prejudice to any claims or defenses any party may assert in the future.

6. This Stipulation contains the entire agreement between the Parties hereto and supersedes any and all previous agreements, whether written or oral, between the Parties relating to the subject matter hereof. No promise or inducement has been made except as set forth herein, and no representation or understanding, whether written or oral, that is not expressly set forth herein shall be enforced or otherwise be given any force or effect in connection herewith.

7. The Parties acknowledge that the preparation of this Stipulation was collaborative in nature, and thereby agree that any presumption or rule that an agreement is construed against its drafter shall not apply to the interpretation of this agreement or any term or provision hereof.

8. This Stipulation may be executed in two or more counterparts, each of which

shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. A facsimile or other duplicate of a signature shall have the same effect as a manually-executed original.

9. Upon execution of this Stipulation by all Parties hereto, the Stipulation of Settlement and Dismissal shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, administrators, successors, and assigns. Each signatory to this Stipulation represents and warrants that he or she is fully authorized to enter into this Stipulation on behalf of his or her client.

10. Execution and filing of this Stipulation of Settlement and Dismissal by counsel for the Parties shall constitute a dismissal of the instant civil action, without prejudice.

Respectfully submitted this 10th day of March, 2017.

Respectfully submitted,

/s/ Michael Harris

Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
Phone: (720) 949-7791
Email: Michaelharris@friendsofanimals.org

Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer

Brett Sommermeyer
Legal Director
Sea Shepherd Legal
2226 Eastlake Ave, E.
No. 108
Seattle, WA 98102
Email: Brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

ROBERT C. TROYER
Acting United States Attorney

/s/ Marisela D. Sandoval

Special Assistant United States Attorney
1801 California Street, Suite 1600
Denver, CO 80202
Telephone: (303) 454-0100
Fax: (303) 454-0404
Email: Marisela.Sandoval@usdoj.gov

Counsel for Defendant

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

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 10th day of March, 2017, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to any party who has entered an appearance in this matter to the email addresses provided in CM/ECF.

s/ Marisela D. Sandoval
Office of the U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY; U.S. FOOD AND DRUG
ADMINISTRATION; NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION; WHITE HOUSE
OFFICE OF MANAGEMENT AND
BUDGET; U.S. DEPARTMENT OF THE
INTERIOR; BUREAU OF LAND
MANAGEMENT; BUREAU OF
RECLAMATION; U.S. FISH AND
WILDLIFE SERVICE; OFFICE OF
SURFACE MINING RECLAMATION
AND ENFORCEMENT; U.S. FOREST
SERVICE; and U.S. DEPARTMENT OF
JUSTICE,

Defendants.

Case No. 17-cv-4084
ECF Case

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Natural Resources Defense Council, Inc. (NRDC) brings this suit to compel the federal government to disclose communications between then-President-elect Donald Trump's transition team and several federal agencies charged with safeguarding the environment and public health. The defendant agencies' failure to release responsive records violates the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and deprives the public of critical information regarding the administration's policies with respect to implementation and enforcement of bedrock health and environmental laws.

2. The transition of power from one President to another is a pivotal time in our democratic system. During this period, the incoming administration sets the foundation for future policymaking, integrates the new President's likely appointees, and ensures the continuation of vital federal functions. The transition is primarily paid for by American taxpayers.

3. Between the November 2016 election and Trump's inauguration in January 2017, members of Trump's transition team communicated with federal agency officials to gather information and lay the groundwork for the new administration's policy priorities. In early December 2016, the Washington Post reported that the transition team asked the Department of Energy for a list of names of employees who had participated in international climate talks or worked

on domestic efforts to cut carbon output.¹ Approximately a week after that, the Post reported that the Trump transition team requested that the Department of State report how much money the department contributes annually to “international environmental organizations in which the department participates.”²

4. The press has also reported that the Trump transition team included “secret” members who played a role in defining the Trump administration’s priorities and producing an “action plan” for the U.S. Environmental Protection Agency.³ Climate change denier and JunkScience.com attorney-blogger Steve Milloy was one of the “secret” members.⁴

5. To date, most of the activities of Trump’s transition team and the list of “secret” members comprising the team have not been publicly disclosed.

6. On December 22 and 23, 2016, NRDC submitted FOIA requests to several federal agencies seeking records of their communications with Trump’s transition team. These agencies include: U.S. Environmental Protection Agency; U.S. Food and Drug Administration; National Oceanic and Atmospheric Administration; White House Office of Management and Budget; U.S. Department

¹ Steven Mufson & Juliet Eilperin, *Trump transition team for Energy Department seeks names of employees involved in climate meetings*, Wash. Post (Dec. 9, 2016), http://wapo.st/2hbSDU0?tid=ss_tw&utm_term=.605e7ffea158.

² Juliet Eilperin & Carol Morello, *Trump team asks State Dept. what it spends on international environmental efforts*, Wash. Post (Dec. 20, 2016), http://wapo.st/2hnfZpb?tid=ss_tw&utm_term=.4a2e9aed48f4.

³ Sean Reilly & Amanda Reilly, *Trump team kept some transition members secret*, E&E News (Feb. 24, 2017), <https://www.eenews.net/stories/1060050546/>.

⁴ *Id.*

of the Interior and certain of its components and agencies; U.S. Forest Service; and U.S. Department of Justice.

7. The agencies' responses to NRDC's FOIA requests are past due. Agencies are generally required to respond to FOIA requests within twenty working days. *See* 5 U.S.C. § 552(a)(6)(A)(i). The twentieth working day following NRDC's submission of its FOIA requests was January 24, 2017 (for requests sent by e-mail on December 22, 2016); January 25, 2017 (for requests sent by e-mail on December 23, 2016); or January 27, 2017 (for a request sent by certified mail on December 22, 2016, and received by the agency on December 28, 2016).

8. In "unusual circumstances," an agency may extend this time limit by up to ten working days. *Id.* § 552(a)(6)(B)(i). The thirtieth working day following NRDC's submission of its FOIA requests was February 7, 2017 (for requests sent by e-mail on December 22, 2016); February 8, 2017 (for requests sent by e-mail on December 23, 2016); or February 10, 2017 (for a request sent by certified mail on December 22, 2016, and received by the agency on December 28, 2016). In some "unusual circumstances," an agency may ask that a FOIA requester narrow a request or agree to a longer response schedule. *See id.* § 552(a)(6)(B)(ii). NRDC has not agreed to a longer schedule with any of the agencies, and no unusual circumstances justify the agencies' continuing failure to provide final responses.

9. Long after these statutory deadlines passed, only one of the defendant agencies has started to produce responsive records. None of the defendant agencies

has provided a final response indicating whether and why records are being withheld.

10. The public has a pressing interest in the Trump administration's efforts to redirect the activities of federal agencies. The failure to release responsive records violates FOIA and deprives the public of critical information regarding the administration's assaults on the nation's bedrock health and environmental laws.

11. NRDC is entitled to immediate processing of its FOIA requests and the release of all responsive records.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

13. Venue is proper in this district because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

PARTIES

14. Plaintiff NRDC is a national, not-for-profit environmental and public health membership organization with hundreds of thousands of members nationwide. NRDC engages in research, advocacy, public education, and litigation related to protecting public health and the environment. NRDC also publishes in several media channels, including online and in print, and regularly communicates newsworthy information to the public, including information obtained under FOIA.

15. Defendant U.S. Environmental Protection Agency (EPA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

16. Defendant U.S. Food and Drug Administration (FDA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

17. Defendant National Oceanic and Atmospheric Administration (NOAA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

18. Defendant White House Office of Management and Budget (OMB) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

19. Defendant U.S. Department of the Interior (DOI) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks. The Office of the Secretary of the Department of the Interior is a component of DOI. The Office of the Solicitor of the Department of the Interior is a component of DOI.

20. Defendant Bureau of Land Management (BLM) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

21. Defendant Bureau of Reclamation (Reclamation) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

22. Defendant U.S. Fish and Wildlife Service (Wildlife Service) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

23. Defendant Office of Surface Mining Reclamation and Enforcement (Surface Mining) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

24. Defendant U.S. Forest Service (Forest Service) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

25. Defendant U.S. Department of Justice (DOJ) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks. The Environment and Natural Resources Division of the Department of Justice is a component of DOJ.

FACTUAL BACKGROUND

26. On December 22, 2016, as detailed below, NRDC filed FOIA requests with EPA, FDA, NOAA, and OMB, for records in each agency's possession, custody, or control that are, include, or reflect communications between agency staff and any member of the transition team of President-elect Donald Trump or Vice-President-elect Mike Pence. Each request explained that "transition team(s)" includes, but is

not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 *note*. These requests were submitted via an online FOIA portal or sent by certified mail, in accordance with each agency's FOIA regulations and guidance.

27. NRDC submitted a FOIA request to EPA via EPA's online FOIA portal on December 22, 2016 (Att. A). EPA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104(a). EPA granted NRDC's fee waiver request on December 29, 2016. On January 17, 2017, EPA notified NRDC that it needed an extension until February 13 for its response. On February 9, 2017, EPA notified NRDC that EPA needed another extension of time. NRDC did not agree to either request. EPA's February 9, 2017 email stated that "it is difficult to predict with certainty how many records may be involved," but "EPA estimates it will be able to complete an initial records search and retrieval for your request by 31 March 2017" and that "[o]f course, we will be working diligently on the request and will provide information to you on a rolling basis, if necessary." In a letter dated March 1, 2017, and transmitted to NRDC by email on March 6, 2017, EPA produced certain materials and reiterated its estimate that it would complete its records search and retrieval by March 31, 2017. EPA's online FOIA portal continues to list March 31, 2017, as the agency's "estimated date of completion."⁵ Almost two months after that date, EPA still has not provided a final response to NRDC's FOIA request.

⁵ *See* FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d2810b9e80#> (last accessed May 31, 2017).

28. NRDC submitted a FOIA request to FDA via the agency's online FOIA portal on December 22, 2016 (Att. B). FDA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 21 C.F.R. § 20.41(b). FDA has not sent a final response to NRDC's FOIA request or produced any records.

29. NRDC submitted a FOIA request to NOAA via the agency's online FOIA portal on December 22, 2016 (Att. C). NOAA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 15 C.F.R. § 4.6(b). NOAA granted NRDC's fee waiver request on January 5, 2017. On February 21, 2017, NOAA sent NRDC an email indicating that the tracking number for the FOIA request had been changed, "which is normally due to the request being transferred to another agency." Neither NOAA nor the Department of Commerce, the cabinet-level agency under which NOAA is housed, has sent a final response to NRDC's request or produced any records.

30. NRDC submitted a FOIA request to OMB via certified mail on December 22, 2016 (Att. D). OMB received the request on December 28, 2016 (Att. E), and its final response was due by January 27, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 5 C.F.R. § 1303.10(c). (The U.S. Postal Service confirmed delivery on December 28, 2016. The certified mail return receipt is signed January 12, 2017 (Att. F).) On January 13, 2017, OMB sent NRDC an e-mail indicating that the FOIA request had been logged. OMB has not sent a final response to NRDC's request or produced any records.

31. On December 23, 2016, as detailed below, NRDC filed FOIA requests with the Department of the Interior and several of its components and agencies (including BLM, Reclamation, Wildlife Service, Surface Mining, and the Office of the Solicitor), the Forest Service, and DOJ, for records in each agency's possession, custody, or control that are, include, or reflect communications between agency staff and any member of the transition team of President-elect Donald Trump or Vice-President-elect Mike Pence. Each request explained that "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 *note*. These FOIA requests were sent by e-mail or certified mail, in accordance with each agency's FOIA regulations and guidance.

32. NRDC submitted a FOIA request to BLM via e-mail on December 23, 2016 (Att. G). BLM's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 28, 2016, BLM informed NRDC that the FOIA request was designated as "Normal track," meaning it "can be processed in six to twenty workdays." BLM has not sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. § 2.24.

33. NRDC submitted a FOIA request to Reclamation via e-mail on December 23, 2016 (Att. H). Reclamation's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 28, 2016, Reclamation informed NRDC that the request was placed on the "Complex" track for processing "in twenty-one to sixty workdays." On January 25, 2017, Reclamation

informed NRDC that the FOIA request was being consolidated with others and referred to the DOI Office of the Secretary. Neither Reclamation nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. §§ 2.13, 2.16(b).

34. NRDC submitted a FOIA request to Wildlife Service via e-mail on December 23, 2016 (Att. I). Wildlife Service's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 27, 2016, Wildlife Service informed NRDC that the FOIA request was being consolidated with others and referred to the DOI Office of the Secretary. Neither Wildlife Service nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. §§ 2.13, 2.16(b).

35. NRDC submitted a FOIA request to Surface Mining via e-mail on December 23, 2016 (Att. J). Surface Mining's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. Surface Mining has not sent a final response to NRDC's request or produced any records.

36. NRDC submitted a FOIA request to the DOI Office of the Solicitor (DOI-Solicitor) via e-mail on December 23, 2016 (Att. K). DOI-Solicitor's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. DOI-Solicitor notified NRDC on December 28, 2016, that NRDC was being classified as an "other use" requester under 43 C.F.R. § 2.39, and that the agency may charge for duplication fees but would not charge review costs. On January 6, 2017, DOI-Solicitor informed NRDC that the DOI Office of the Secretary would be responding

on its behalf to this request. Neither DOI-Solicitor nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See id.* § 2.24.

37. NRDC submitted a FOIA request to the Forest Service via e-mail on December 23, 2016 (Att. L). The Forest Service's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 7 C.F.R. § 1.7(a). On January 6, 2017, the Forest Service notified NRDC that the agency was referring the request to the U.S. Department of Agriculture's FOIA Service Center. NRDC exchanged several e-mails with a U.S. Department of Agriculture employee in January and February, clarifying the scope of the FOIA request. Neither the Forest Service nor the U.S. Department of Agriculture has sent a final response to NRDC's request or produced any records.

38. NRDC submitted a FOIA request to DOJ, through DOJ's Environment and Natural Resources Division, via e-mail on December 23, 2016 (Att. M). DOJ's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.5(c). DOJ has not sent a final response to NRDC's request or produced any records.

39. With each of these FOIA requests, NRDC sought from each agency a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records 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 in NRDC's commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii);

see also 40 C.F.R. § 2.107(*l*) (EPA); 21 C.F.R. § 20.46 (FDA); 15 C.F.R. 4.11(*l*) (NOAA); 5 C.F.R. § 1303.70 (OMB); 43 C.F.R. § 2.45 (DOI); 7 C.F.R. pt. 1, subpart A, app. A, § 6 (Forest Service); 28 C.F.R. § 16.10(k) (DOJ).

40. NRDC also sought a fee waiver because it qualifies as a “representative of the news media” and the records are not for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(b)(6), (c)(1)(iii) (EPA); 21 C.F.R. § 20.45(a)(2) (FDA); 15 C.F.R. § 4.11(b)(6), (c) (NOAA); 5 C.F.R. § 1303.50(c) (OMB); 43 C.F.R. §§ 2.39, 2.70 (DOI); 7 C.F.R. pt. 1, subpart A, app. A, § 5(c) (Forest Service); 28 C.F.R. § 16.10(b)(6), (c) (DOJ).

CLAIM FOR RELIEF

41. Plaintiff incorporates by reference all preceding paragraphs.

42. NRDC has a statutory right under FOIA to obtain immediately all records responsive to its requests that are not exempt from disclosure.

43. Each defendant agency has violated its statutory duty under FOIA, 5 U.S.C. § 552(a), and the applicable implementing regulations, to release all non-exempt, responsive records to NRDC.

44. Each defendant agency has violated its statutory duty under FOIA, 5 U.S.C. § 552(a)(3)(C), to make a reasonable effort to search for responsive records.

45. Because the defendant agencies failed to comply with FOIA’s statutory deadlines, NRDC has a right to obtain responsive records without being assessed any search or duplication fees. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

REQUEST FOR RELIEF

NRDC respectfully requests that the Court enter judgment against the defendant agencies as follows:

- A. Declaring that the agencies have violated FOIA by failing to produce non-exempt records responsive to NRDC's FOIA requests by the statutory deadlines;
- B. Ordering the agencies to disclose the requested records to NRDC without further delay, and without charging search or duplication costs;
- C. Ordering defendants FDA, OMB, BLM, Reclamation, Wildlife Service, Surface Mining, Forest Service, and DOJ, to grant NRDC's fee waiver requests;
- D. Retaining jurisdiction over this case to rule on any assertions by any agency that certain responsive records are exempt from disclosure;
- E. Ordering the agencies to produce an index identifying any documents or parts thereof that the agencies withheld and the basis for the withholding, in the event that any agency determines that certain responsive records are exempt from disclosure;
- F. Awarding NRDC its costs and reasonable attorneys' fees; and
- G. Granting such other relief that the Court considers just and proper.

Dated: May 31, 2017

Respectfully submitted,

/s/ Vivian H.W. Wang

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Attachment A

NRDC

December 22, 2016

Via FOIA Online

Re: FOIA request for communications between the President-elect's transition team and EPA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Environmental Protection Agency (EPA) regulations at 40 C.F.R. § 2.100-2.406.

I. Description of Records Sought

Please produce records¹ in EPA's possession, custody, or control that are, include, or reflect communications between EPA staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Scott Pruitt, Myron Ebell, David Kreutzer, Austin Lipari, David Schnare, David Stevenson, George Sugiyama, Amy Oliver Cooke, Christopher Horner, and Harlan Watson.

II. Request for a Fee Waiver

NRDC requests that EPA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any EPA office, including, but not limited to, EPA Headquarters offices, and specifically including EPA offices in possession of responsive records.

to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(c)(1)(iii).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). Each of the four factors used by EPA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 40 C.F.R. § 2.107(l)(2).

1. Subject of the request

The records requested here reflect communications between EPA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with EPA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at EPA, as further discussed below. However, if EPA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, EPA must presume that this disclosure is likely to contribute to public understanding of its subject. 40 C.F.R. § 2.107(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning EPA staffing and policy, extensive communications capabilities, and proven history

of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of the transition of power at EPA, 40 C.F.R. § 2.107(l)(2)(iii), and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 40 C.F.R. § 2.107(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).

- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA's part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, "Drug critic slams FDA over antibiotic oversight in meat production," *Reuters*, Jan. 27, 2014 (discussing NRDC's report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," *Nat'l Pub. Radio, All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).

- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).
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As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

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The records requested shed light on a matter of considerable public interest and concern: the transition of power at EPA and the communications between the President-elect's transition team and EPA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate EPA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. 40 C.F.R. § 2.107(l)(2)(iv).

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B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1), (3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by EPA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if EPA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and EPA's FOIA regulations, 40 C.F.R. § 2.107(c)(1)(iii); see also 40 C.F.R. § 2.107(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

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Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with EPA’s FOIA regulations at 40 C.F.R. § 2.107(c)(1)(iv) for all or a portion of the requested records. *See* 40 C.F.R. § 2.107(l)(4). Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; EPA’s search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104. If EPA concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via FOIA Online):

Attachments 1 through 42 (single .pdf file)

Attachment B



December 22, 2016

Via Online FDA FOIA Portal

Re: FOIA request for communications between the President-elect's transition team and FDA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Food and Drug Administration (FDA) regulations at 21 C.F.R. § 20.1-20.120.

I. Description of Records Sought

Please produce records¹ in FDA's possession, custody, or control that are, include, or reflect communications between FDA staff in the Office of Foods and Veterinary Medicine (including the Center for Food Safety and Applied Nutrition and the Center for Veterinary Medicine) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Peter Thiel, Marie Meszaros, John Brooks, Andrew Bremberg, Renee Amooore, Scott Gottlieb, Eric Hargan, Nina Owcharenko Schaefer, Kamran Daravi, Ed Haislmaier, Maggie Wynne, and Paula Stannard.

II. Request for a Fee Waiver

NRDC requests that FDA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 21 C.F.R. § 20.46(a). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 21 C.F.R. § 20.45(a)(2).

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any FDA office, including, but not limited to, FDA Headquarters offices, and specifically including FDA offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 21 C.F.R. § 20.46(a)(1). Each of the four factors used by FDA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. See 21 C.F.R. § 20.46(b).

1. Subject of the request

The records requested here reflect communications between FDA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 21 C.F.R. § 20.46(b)(1).

2. Informative value of the information to be disclosed

The requested records would “reveal any meaningful information about Government operations or activities that is not already public knowledge.” 21 C.F.R. § 20.46(b)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. See “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with FDA that would similarly have informative value to the public. See *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at FDA, as further discussed below. However, if FDA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, that is sufficient evidence that this disclosure is likely to contribute to public understanding of its subject. 21 C.F.R. § 20.46(b)(3).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning FDA staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the

records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request. *See* 21 C.F.R. § 20.46(b)(3).

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, “Protest Raised over New Tests of Naval Sonar,” Nat’l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration’s Energy Task Force, along with analysis of selected excerpts and links to the administration’s index of withheld documents (Att. 31). NRDC’s efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, “Bush Gets One-Two Punch on Energy,” *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
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Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange, Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org, 415-875-6184

Enclosures (sent via FOIA Online): Attachments 1 through 42 (single .pdf file)

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media.

Attachment C



December 22, 2016

Via FOIA Online

Re: FOIA request for communications between the President-elect's transition team and NOAA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Commerce regulations at 15 C.F.R. § 4.1-4.11.

I. Description of Records Sought

Please produce records¹ the Department of Commerce's possession, custody, or control that are, include, or reflect communications between National Oceanic and Atmospheric Administration's (NOAA's) staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Wilbur Ross, Ray Washburne, David Bohigian, Joan Maginnis, George Sifakis, William Gaynor, A. Mark Neuman, and Tom Leppert.

II. Request for a Fee Waiver

NRDC requests that NOAA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l). The requested disclosure would meet both of these

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any NOAA office, including, but not limited to, NOAA Headquarters offices, and specifically including NOAA offices in possession of responsive records.

requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 15 C.F.R. § 4.11(c)(1), (d).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(i). Each of the four factors used by NOAA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 15 C.F.R. § 4.11(l)(2).

1. *Subject of the request*

The records requested here reflect communications between NOAA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 15 C.F.R. § 4.11(l)(2)(i).

2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 15 C.F.R. § 4.11(l)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with NOAA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at NOAA, as further discussed below. However, if NOAA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, NOAA must presume that this disclosure is likely to contribute to public understanding of its subject. 15 C.F.R. § 4.11(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning NOAA staffing and policy, extensive communications capabilities, and proven

history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of the transition of power at NOAA, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 15 C.F.R. § 4.11(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).

- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA's part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, "Drug critic slams FDA over antibiotic oversight in meat production," *Reuters*, Jan. 27, 2014 (discussing NRDC's report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," *Nat'l Pub. Radio, All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).

- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).
- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at NOAA and the communications between the President-elect's transition team and NOAA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate NOAA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 15 C.F.R. § 4.11(l)(2)(iv).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(ii). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by NOAA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if NOAA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Department of Commerce FOIA regulations, 15 C.F.R. § 4.11(c), (d); see also 15 C.F.R. § 4.11(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 15 C.F.R. § 4.11(b)(6) (stating that examples of news media include . . . publishers of periodicals). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and

media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department of Commerce’s FOIA regulations for all or a portion of the requested records. *See* 15 C.F.R. § 4.11. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; NOAA’s search for—or deliberations concerning—certain records should not delay the production of others that NOAA has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.7. If NOAA concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via FOIA Online):

Attachments 1 through 42 (single .pdf file)

Attachment D



December 22, 2016

Via Certified Mail

Dionne Hardy, FOIA Officer
Office of Management and Budget
725 17th Street NW, Room 9026
Washington, DC 20503

Re: FOIA request for communications between the President-elect's transition team and OMB staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Office of Management and Budget (OMB) regulations at 5 C.F.R. § 1303.1-1303.70.

I. Description of Records Sought

Please produce records¹ in OMB's possession, custody, or control that are, include, or reflect communications between OMB staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Edwin Meese, Dan Kowalski, Russ Vought, Justin Bogie, Karen Evans, Pat Pizzella, Mark Robbins, Paul Winfree, Linda Springer, and David Burton.

II. Request for a Fee Waiver

NRDC requests that OMB waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 5 C.F.R. § 1303.70. The requested disclosure would meet both of these

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requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 5 C.F.R. § 1303.50(c).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. § 1303.70.

1. Subject of the request

The records requested here reflect communications between OMB and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the Government.” 5 C.F.R. § 1303.70.

2. Informative value of the information to be disclosed

The requested records are “likely to contribute significantly to” the public’s understanding of government operations and activities. 5 C.F.R. § 1303.70. The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with OMB that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at OMB, as further discussed below. However, if OMB were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning OMB staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a

requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

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- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
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- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. See *Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); see also William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. See *Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. See, e.g., "Protest Raised over New Tests of Naval Sonar," Nat'l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. See Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. See, e.g., Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

4. Significance of the contribution to public understanding

The records requested shed light on a matter of considerable public interest and concern: the transition of power at OMB and the communications between the President-elect’s transition team and OMB staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate OMB’s response to any such requests. Thus, disclosure here would significantly contribute to the public’s understanding of government operations or activities. See 5 C.F.R. § 1303.70.

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. § 1303.70. NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Envtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by OMB on the transition relates to a matter

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if OMB denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and OMB's FOIA regulations, 5 C.F.R. § 1303.50(c); *see also* 5 C.F.R. § 1303.30(j) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, U.S. Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 5 C.F.R. § 1303.30(j) (“Examples of news media include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on Twitter and Facebook, and through content distributed to outlets such as Medium. *See* OPEN Gov’t Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (accord[ing] media requester status to the ACLU).³

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media.

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC's publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm'n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with OMB's FOIA regulations for all or a portion of the requested records. *See* 5 C.F.R. § 1303.40. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; OMB's search for—or deliberations concerning—certain records should not delay the production of others that OMB has already retrieved and elected to produce. If OMB concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via FOIA Online): Attachments 1 through 42 (single .pdf file)

Attachment E

USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: 70161970000023486185



Delivered

Updated Delivery Day: Wednesday, December 28, 2016 ⓘ

Product & Tracking Information

[See Available Actions](#)

Postal Product:
Priority Mail™

Features:
Certified Mail™
Return Receipt
Up to \$50 insurance included
Restrictions Apply ⓘ

See tracking for related item:
[9590940304065163920575 \(/go/TrackConfirmAction?
tLabels=9590940304065163920575\)](https://tools.usps.com/go/TrackConfirmAction?tLabels=9590940304065163920575)

DATE & TIME

STATUS OF ITEM

LOCATION

**December 28, 2016, 4:25
am**

Delivered

WASHINGTON, DC 20500



Your item was delivered at 4:25 am on December 28, 2016 in WASHINGTON, DC 20500.

December 27, 2016, 11:18
am

Available for Pickup

WASHINGTON, DC 20500

DATE & TIME	STATUS OF ITEM	LOCATION
December 27, 2016, 10:53 am	Arrived at Unit	WASHINGTON, DC 20018
December 25, 2016, 10:17 pm	In Transit to Destination	

[See More](#) 

Available Actions

[See Less](#) 

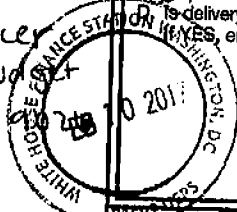
Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

[FAQs \(http://faq.usps.com/?articleId=220900\)](http://faq.usps.com/?articleId=220900)

Attachment F

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature X <i>Dionne Hardy</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to: Dionne Hardy, FOIA Officer Office of Management + Budget 725 19 th St. NW, Room 6185 Washington, DC 20503	B. Received by (Printed Name) DIONNE HARDY	C. Date of Delivery 01/12/17
 9590 9403 0406 5163 9205 75	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. <i>(transfer from service label)</i> 7016 1970 0000 2348 6185	Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	
PS Form 3811, April 2015 PSN 7530-02-000-9033		Domestic Return Receipt



UNITED STATES POSTAL SERVICE
SAN FRANCISCO DISTRICT
MD 207
30 FEB '17
PM 3 1



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•
Jackie Prange
NRDC
111 Sutter St, 21st Floor
San Francisco, CA 94104

USPS TRACKING#



9590 9403 0406 5163 9205 75

Attachment G

NRDC

December 23, 2016

Via email

blm_wo_foia@blm.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Bureau of Land Management and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
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NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
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- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
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- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

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Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

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Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment H

NRDC

December 23, 2016

Via email
bor_foia@usbr.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Bureau of Reclamation (BOR) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, “Protest Raised over New Tests of Naval Sonar,” Nat’l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
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Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

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Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment I



December 23, 2016

Via email
fwhq.foia@fws.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the United States Fish and Wildlife Service (FWS) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, “Protest Raised over New Tests of Naval Sonar,” Nat’l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration’s Energy Task Force, along with analysis of selected excerpts and links to the administration’s index of withheld documents (Att. 31). NRDC’s efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, “Bush Gets One-Two Punch on Energy,” *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration’s decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, “Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from

International Global Warming Panel,” Apr. 3, 2002 (Att. 33); Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment J

NRDC

December 23, 2016

Via email

osm-foia@osmre.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Office of Surface Mining Reclamation and Enforcement (OSMRE) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

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NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

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International Global Warming Panel,” Apr. 3, 2002 (Att. 33); Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment K

NRDC

December 23, 2016

Via email

sol.foia@sol.doi.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Office of the Solicitor (SOL) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

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International Global Warming Panel,” Apr. 3, 2002 (Att. 33); Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment L

NRDC

December 23, 2016

Via Email

wo_foia@fs.fed.us

Re: FOIA request for communications between the President-elect's transition team and Forest Service staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Agriculture regulations at 7 C.F.R. § 1.1-1.25.

I. Description of Records Sought

Please produce records¹ in the Forest Service's possession, custody, or control that are, include, or reflect communications between Forest Service staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Joel Leftwich and Brian Klippenstein.

II. Request for a Fee Waiver

NRDC requests that the Forest Service waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any Forest Service office, including, but not limited to, Forest Service Headquarters offices, and specifically including Forest Service offices in possession of responsive records.

news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a). Each of the factors used by the Forest Service to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a).

1. *Subject of the request*

The records requested here reflect communications between the Forest Service and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(i).

2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with the Forest Service that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at the Forest Service, as further discussed below. However, if the Forest Service were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure*

NRDC’s expertise in matters concerning Forest Service staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons

with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at the Forest Service, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly reasonably broad. 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).

- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA's part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, "Drug critic slams FDA over antibiotic oversight in meat production," *Reuters*, Jan. 27, 2014 (discussing NRDC's report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," *Nat'l Pub. Radio, All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate

Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

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As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at the Forest Service and the communications between the President-elect's transition team and Forest Service staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate the Forest Service's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(iv).

5. *NRDC does not have a commercial interest in the disclosure*

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(v), (vi). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); *see Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by the Forest Service on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

B. NRDC is a non-profit organization designed to further public health safety

The Department’s FOIA regulations also give the Forest Service the ability to waive fees if the requester is “engaged in a nonprofit activity designed for the public safety, health, or welfare.” 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(3)(ii). NRDC is a non-profit organization whose mission is to “to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends.” As described in the sections above, NRDC is engaged in nonprofit activity designed to further public health and safety. Therefore, the Forest Service should waive any fees on this basis as well.

C. NRDC Is a Media Requester

Even if the Forest Service denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Forest Service’s FOIA regulations, 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c)(1) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c)(3) (“Examples of news media

entities include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Forest Service’s FOIA regulations for all or a portion of the requested records. *See* 7 C.F.R. Pt. 1, Subpt. A, App. A. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; the Forest Service's search for—or deliberations concerning—certain records should not delay the production of others that the Forest Service has already retrieved and elected to produce. *See generally* 7 C.F.R. § 1.7. If the Forest Service concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via two emails): Attachments 1 through 40

Attachment M

NRDC

December 23, 2016

Via Email

FOIARouting.enrd@usdoj.gov

Re: FOIA request for communications between the President-elect's transition team and ENRD staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Justice regulations at 28 C.F.R. § 16.1-16.301.

I. Description of Records Sought

Please produce records¹ in the Environment and Natural Resources Division's (ENRD's) possession, custody, or control that are, include, or reflect communications between ENRD staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Jeff Sessions, Brian Benczkowski, Zina Bash, Greg Katsas, James Burnham, William Cleveland, David Higbee, J. Patrick Rowan, Jessie Liu, Ronald Tenpas, Lizette Benedi Herraiz, Steven Engel, Thomas Wheeler, Stefani Carter, James Burnham, Michael Battle, and Edmund Searby.

II. Request for a Fee Waiver

NRDC requests that ENRD waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. §

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any ENRD office, including, but not limited to, ENRD Headquarters offices, and specifically including ENRD offices in possession of responsive records.

552(a)(4)(A)(iii); *see also* 28 C.F.R. § 16.10(k)(1)(i), (ii). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 28 C.F.R. § 16.10(c)(1)(i), (d)(1).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(1)(i). Each of the four factors used by ENRD to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 28 C.F.R. § 16.10(k)(2).

1. Subject of the request

The records requested here reflect communications between ENRD and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 28 C.F.R. § 16.10(k)(2)(i).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 28 C.F.R. § 16.10(k)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with ENRD that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at ENRD, as further discussed below. However, if ENRD were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, ENRD must presume that this disclosure is likely to contribute to public understanding of its subject. 28 C.F.R. § 16.10(k)(2)(iii).

However, even if NRDC were not a media requester, NRDC's expertise in matters concerning ENRD staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a "broad audience of persons interested in the subject" of the transition of power at ENRD, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 28 C.F.R. § 16.10(k)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters

and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly

Kindy, "Are secret, dangerous ingredients in your food?" *Wash. Post*, Apr. 7, 2014 (discussing NRDC's report) (Att. 23).

- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA's part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, "Drug critic slams FDA over antibiotic oversight in meat production," *Reuters*, Jan. 27, 2014 (discussing NRDC's report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," Nat'l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).

- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).
- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at ENRD and the communications between the President-elect's transition team and ENRD staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate ENRD's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 28 C.F.R. § 16.10(k)(2)(iv).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’t. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by ENRD on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if ENRD denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and ENRD’s FOIA regulations, 28 C.F.R. § 16.10(c)(1), (d)(1); see also 28 C.F.R. § 16.10(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 28 C.F.R. § 16.10(b) (“Examples of news media entities include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN

Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with ENRD’s FOIA regulations for all or a portion of the requested records. *See* 28 C.F.R. § 16.10. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; ENRD’s search for—or deliberations concerning—certain records should not delay the production of others that ENRD has already retrieved and elected to produce. *See generally* 28 C.F.R. § 16.5-16.6. If ENRD concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures: Attachments 1 through 40 (sent via two emails)

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

Public Employees for Env'tl Responsibility

Plaintiff

v.

National Oceanic and Atmospheric Administration

Defendant

Civil Action No. 16-cv-1631 (CRC)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, MD 20910

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) 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:

Laura Dumais
Public Employees for Environmental Responsibility
962 Wayne Avenue, Suite 610
Silver Spring, MD 20910

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: 8/12/2016



/s/ Sherryl Horn

Signature of Clerk or Deputy Clerk

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY,
962 Wayne Ave, Suite 610
Silver Spring, MD 20910

Plaintiff,

v.

NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION
1315 East-West Highway
Silver Spring, MD 20910

Defendant.

Civil Action No. 16-cv-1631

COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiff Public Employees for Environmental Responsibility (“PEER” or “Plaintiff”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, as amended, to compel the National Oceanic and Atmospheric Administration (“NOAA”) to disclose records wrongfully withheld in failing to produce documents or assure production within the statutory deadline to Plaintiff’s FOIA request.
2. Plaintiff is a non-profit organization dedicated to research and public education concerning the activities and operations of federal, state, and local governments.
3. On April 29, 2016, Plaintiff sent a FOIA request seeking records related to efforts by NOAA’s Office of Science and Technology of the National Marine Fisheries Service (“NMFS-OST”) to replace Fisheries Observers - who are tasked with overseeing fishing fleet compliance with catch limits, by-catch rules, and other marine regulation - with video-camera electronic monitoring on fishing vessels.

4. The FOIA requires federal agencies to respond to public requests for records, including files maintained electronically, to increase public understanding of the workings of government and to provide access to government information. FOIA reflects a “profound national commitment to ensuring an open Government” and agencies must “adopt a presumption in favor of disclosure.” Presidential Mem., 74 Fed. Reg. 4683 (Jan. 21, 2009).
5. The FOIA requires agencies to determine within 20 working days after the receipt of any FOIA request whether to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i); 15 C.F.R. § 4.6(b). Agencies may extend this time period only in “unusual circumstances” but only for a maximum of ten additional working days. 5 U.S.C. § 552(a)(6)(B)(i); 15 C.F.R. § 903.1 (providing that the rules and procedures regarding access to NOAA records shall be those found at 14 C.F.R. Part 4); 15 C.F.R. § 4.6(d).
6. To date, Defendant has failed to produce any records in response to Plaintiff’s April 29, 2016 FOIA request, No. DOC-NOAA-2016-001080.
7. Defendant’s conduct is arbitrary and capricious and amounts to a denial of Plaintiff’s FOIA request. NOAA is frustrating Plaintiff’s efforts to educate the public about NMFS-OST’s efforts to replace human Fisheries Observers with electronic monitoring systems and whether such systems are effective.
8. Plaintiff constructively exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i), and now seeks an order from this Court requiring Defendant to immediately produce the records sought in Plaintiff’s FOIA request, as well as other appropriate relief, including attorneys’ fees and costs.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B). This Court also has federal question jurisdiction over this action under 28 U.S.C. § 1331.
10. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
11. This Court is a proper venue under 5 U.S.C. § 552(a)(4)(B) (providing for venue in FOIA cases in the District of Columbia).
12. This Court has the authority to award reasonable costs and attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

PARTIES

13. Plaintiff, PEER, is a non-profit public interest organization incorporated in Washington, D.C. and headquartered in Silver Spring, Maryland, with field offices in California, Colorado, Florida, Massachusetts, and Tennessee.
14. Among other public interest projects, PEER engages in advocacy, research, education, and litigation relating to the promotion of public understanding and debate concerning key current public policy issues. PEER focuses on the environment, including the regulation and remediation of toxic substances, public lands and natural resource management, public funding of environmental and natural resource agencies, and ethics in government. PEER educates and informs the public through news releases to the media, through its web site, www.peer.org, and through publication of the PEER newsletter.
15. Defendant, NOAA, is an agency of the United States as defined by 5 U.S.C. § 552(f)(1).

16. Defendant is charged with the duty to provide public access to records in its possession consistent with the requirements of the FOIA. Here, Defendant is denying Plaintiff access to its records in contravention of federal law.

STATEMENT OF FACTS

17. On April 29, 2016, PEER electronically submitted a FOIA request for information concerning NOAA's consideration of the possibility of replacing Fisheries Observers with video-camera electronic monitoring. Specifically, PEER requested, for the time period between April 1, 2014 and the present:
- a. All studies or analyses comparing the costs of electronic monitoring versus human fisheries observers conducted or obtained by NMFS;*
 - b. All studies or analyses comparing the effectiveness or quality of electronic monitoring versus human fisheries observers conducted or obtained by NMFS;*
 - c. Any directives that NMFS has issued concerning use of electronic monitoring rather than or in conjunction with human observers;*
 - d. Any material describing how and by whom the electronic monitoring would be reviewed by human monitors to interpret what was captured on camera;*
 - e. Records indicating how electronic monitoring data will be aggregated, summarized and made publicly accessible;*
 - f. Documents reflecting the safeguards that will be required to police against manipulating or disabling cameras; and*
 - g. All communications between representatives of the fishing industry and NMFS concerning electronic monitoring.*
18. PEER had made two similar requests in the past, in June 2013 and April 2014; both of which resulted in production of requested documents in full.
19. PEER received a confirmation of submission from FOIAonline with a tracking number: DOC-OS-2016-001080. On May 2, 2016, PEER received notification that its FOIA request was transferred to NOAA with a new tracking number of DOC-NOAA-2016-001080.

20. On May 12, 2016, in response to PEER's request for a full waiver of fees, NOAA's FOIA Officer emailed PEER requesting information justifying PEER's "qualifications to distribute the records to a reasonably broad segment of interested individuals" and how the requested records "would significantly increase their understanding of the subject."
21. NOAA's FOIA office did not request additional information justifying PEER's fee waiver request when PEER submitted similar statements of qualifications for its 2013 and 2014 requests. Nor has PEER ever, in its more than 23 year history, ever been denied a fee waiver on the basis that it was unable or unqualified to distribute the requested information to the general public.
22. PEER responded to the NOAA FOIA Officer the very next day, May 13, 2016 explaining how more than 550 journalists and reporters subscribe to receive news from PEER and providing a link to PEER's website showing 15 news articles generated in less than one week. PEER also explained that the requested records would help the public understand whether cost-effective electronic surveillance systems that meet both regulatory and scientific demands are anywhere near deployment, and understand how their tax dollars have been – and will likely in the future be – spent to automate observer functions.
23. On June 15, 2016, NOAA granted a fee waiver for PEER's FOIA request, claimed unusual circumstances under 15 C.F.R. 4.6(d)(2), invoked the maximum ten day extension, and stated that it "anticipate[d] completing [PEER's] request by July 16, 2016." The FOIA Officer did not request further information, and has not communicated with PEER since. The July 16 date came and went without the production of a single responsive document.
24. On July 20, 2016 – after the statutory period for production had expired – NOAA's NMFS Office of Science and Technology transmitted via email a request for clarification on one of

the seven items from Plaintiff's FOIA request, along with the statement, "Your request will not be processed until we hear from you." The letter gives no explanation as to why the other six items listed of Plaintiff's FOIA request – which required no clarification – were not scheduled for production. Additionally, the same item about which Defendant claimed a need for clarification was contained in both of PEER's prior FOIA requests on the topic, which Defendant previously fulfilled without requesting clarification.

25. Nonetheless, Plaintiff provided the requested clarification on the sole item the very next day on July 21, 2016.
26. NOAA never requested any further clarification on any item of Plaintiff's request or further contacted Plaintiff.
27. As of the date of this filing, 85 working days have passed since Plaintiff's April 29, 2016 request, exceeding the time allowed by 5 U.S.C. § 552(a)(6) and 15 C.F.R § 4.6(b).
28. Administrative remedies are deemed exhausted when an agency fails to comply with the applicable time limits. 5 U.S.C. § 552(a)(6)(C)(i). Having fully exhausted its administrative remedies for its April 29, 2016 FOIA request, PEER now turns to this Court to enforce the remedies and public access to agency records guaranteed by the FOIA.

CAUSE OF ACTION

Violation of the Freedom of Information Act

29. Plaintiff incorporates the allegations in the preceding paragraphs.
30. Defendant's failure to disclose the records requested under Request No. DOC-NOAA-2016-001080 within the time frames mandated by statute is a constructive denial and wrongful withholding of records in violation of FOIA, 5 U.S.C. § 552, and the relevant agency regulations promulgated thereunder, 15 C.F.R. § 4.1 *et. seq.*

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

- i. Enter an order declaring that Defendant wrongfully withheld requested agency records;
- ii. Issue a permanent injunction directing Defendant to disclose to Plaintiff all wrongfully withheld records;
- iii. Maintain jurisdiction over this action until Defendant is in compliance with the FOIA, the Administrative Procedure Act, and every order of this Court;
- iv. Award Plaintiff attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- v. Grant such additional and further relief to which Plaintiff may be entitled.

Respectfully submitted on August 11, 2016,

/s/ Laura Dumais

Laura Dumais, DC Bar # 1024007
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910
(202) 265-7337

Counsel for Plaintiff

Tracking Number	Type	Requester	Requester Organization
DOC-NOAA-2017-001403	Request	Robert Shuchman	MTRI, Michigan Technological University
DOC-NOAA-2017-001394	Request	Ivy N. Fredrickson	Ocean Conservancy
DOC-NOAA-2017-001391	Request	Elizabeth A. Mitchell	Association for Professional Observers
DOC-NOAA-2017-001390	Request	Elizabeth A. Mitchell	Association for Professional Observers
DOC-NOAA-2017-001380	Request	Tom McDonald	Cascadia Law Group PLLC
DOC-NOAA-2017-001367	Request	Shannon M. Cremeans	

Custom Report - 06/22/2017 05:

Submitted	Received	Assigned To	Case File Assigned To	Perfected?	Due
06/20/2017	06/20/2017	NOAA	NOAA	No	TBD
06/19/2017	06/19/2017	Beverly J. Smith	Beverly J. Smith	Yes	07/18/2017
06/16/2017	06/16/2017	Jennifer Pralgo	Jennifer Pralgo	Yes	07/18/2017
06/16/2017	06/16/2017	Jennifer Pralgo	Jennifer Pralgo	Yes	07/18/2017
06/14/2017	06/15/2017	Ana Liza Malabanan	Ana Liza Malabanan	Yes	07/14/2017
06/13/2017	06/14/2017	Tawand Hodge Tonic	Tawand Hodge Tonic	Yes	07/13/2017

:06:49

Closed Date	Status	Dispositions
TBD	Initial Evaluation	
TBD	Assignment Determination	
TBD	Assignment Determination	
TBD	Assignment Determination	
TBD	Assignment Determination	
TBD	Assignment Determination	

Detail

Michigan Tech kindly requests a formal debrief on the CILER21 proposal that was not selected for funding. NOAA- We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files. Through the Freedom of Information Act, I request the following documents: A summary of all complaints of violence. Through the Freedom of Information Act, I request the following documents: 1. E-mails, photographs and possibly video. This request is directed to the National Marine Fisheries Service and pertains to the Pacific Northwest region (Wasam writing to request a copy of the Marine Mammal Inventory Report (MMIR). I would like this copy to include all materials.

NOAA-CIPO-2017-2005127 - candice.jongsma@noaa.gov

es, electronic mail records, or other documents, which were generated, received, kept, and/or considered, threats, or harassment against fisheries observers in US fisheries observer programs that occurred in Washington state). Full text of the request is contained on the uploaded .pdf file entitled FOIA - NMFS-Pacific marine mammals (pinnipeds, cetaceans). I would like it to include all living and dead animals and include

d by NMFS relating to the reopening of the red snapper season, between the dates of January 20, 2017
n calendar year 2013, 2014, 2015, and 2016, separated by: 1. Year; 2. Whether the complaint was initial
No. 1, a US-flagged Patagonia Toothfish longline vessel then owned by Lawrence Lasarow, PacFish, Ir
W-WA (061417). All public disclosure records requests made to NATIONAL MARINE FISHERIES SERVICE at
every facility. Please sort/organize this request first by holder/facility then chronologically.