From: Kelton, Cindy (Federal) <ckelton@doc.gov>
Sent: Monday, May 22, 2017 12:28 PM
To: z1mian@hotmail.com
Cc: Graff, Mark (Federal)
Subject: FOIA Appeal DOC-OS-2017-000929 Final Disposition
Attachments: DOC-NOAA-2017-000499 - Appeal Final Disposition.pdf; DOC-NOAA-2017-000499 - Enclosures.pdf

Ms. Mian,

Please find attached final disposition for FOIA appeal DOC-NOAA-2017-000499.

Thanks,

Cindy Kelton
Administrative Assistant
Department of Commerce
Office of General Counsel
ELI/InfoLaw
202-482-8103

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

From: foia@regulations.gov [mailto:foia@regulations.gov]
Sent: Saturday, April 01, 2017 2:18 AM
To: Appeals, FOIA <foiaappeals@doc.gov>; Kelton, Cindy (Federal) <ckelton@doc.gov>; Bogomolny, Michael (Federal) <MBogomolny@doc.gov>
Subject: FOIA Appeal DOC-OS-2017-000929 Submitted

This message is to notify you of a new appeal submission to the FOIAonline application. Appeal information is as follows:

- Appeal Tracking Number: DOC-OS-2017-000929
- Request Tracking Number: DOC-NOAA-2017-000499
- Requester Name: Zeenat Mian
- Date Submitted: 04/01/2017
- Appeal Status: Submitted
- Description: 1) The document submitted does not have the signatures from HMMA Board members, the applicants.
  2) There are no documents either showing the acceptance from NOAA.

Therefore, since there are no signatures,
there is no way to determine if this is the actual document used and accepted in the application process for that grant/cooperation agreement and by extension completely unable to establish this is the information I requested.
I wish to be provided the official approved document with the requested information.

UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, DC 20230

MAY 1 6 2017

Via FOIAOnline

May 16, 2017

Zeenat Mian
6750 Hawaii Kai Dr. #301
Honolulu, HI 96825
Z1mian@hotmail.com

Re: FOIA Appeal No. DOC-OS-2017-000929 (Request No. DOC-NOAA-2017-000499)

Dear Ms. Mian,

This responds to your April 1, 2017 administrative appeal, filed pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. § 552), of the National Oceanic and Atmospheric Agency's (NOAA) final response to your FOIA request with tracking number DOC-NOAA-2017-000499. As set forth below, your appeal is partially granted.

The request you submitted sought "information of HMMA's Hawaiian monk seal duties as specified on the cooperative grant with NOAA." On February 6, 2017, NOAA provided a final response that enclosed two documents. Your appeal challenges the adequacy of NOAA's search and contends that "(1) the document submitted does not have the signatures from HMMA Board members, the applicants. (2) there are no documents either showing the acceptance from NOAA. Therefore, since there are no signatures, there is no way to determine if this is the actual document used and accepted in the application process for that grant/cooperation agreement and by extension completely unable to establish this is the information I requested. I wish to be provided the official approved document with the requested information."

In your appeal, you appear to clarify or expand the scope of your request, seeking a document signed by NOAA and the Board of Directors of HMMA. Typically, such a document would not exist in relation to a grant. The closest analogue to a signed agreement is the Financial Assistance Award Form CD-450. This form contains electronic signatures of the grants officer and a representative of the grant recipient, however, the form neither indicates the details of the project nor does it lay out the duties of the grant recipient. Instead, that information is incorporated by reference to other documents. As such, the CD-450 was not deemed responsive to the initial search performed by NOAA because it does not contain "information [about] HMMA's Hawaiian monk seal duties."

It appears that NOAA provided all responsive documents because HMMA's duties are enumerated within the Special Award Conditions for Award Number NA16NMF4540057, which <u>was</u> released to you on February 6, 2017. However, given your apparent interest in a signed document, we are enclosing a copy of the form CD-450 (1 page). Your request appears to be focused on HMMA's role in the project, but if you are interested in further information regarding the project details and the project award, we note that information is publicly available on NOAA's Grants Online

website, https://grantsonline.rdc.noaa.gov. The information on Grants Online references Federal Funding Opportunity NOAA-NMFS-PIRO-2016-2004735, "2016 Partnerships for Hawaiian Monk Seal Recovery and Marine Mammal Response in Hawaii", which in turn is publicly available in the archives at https://www.grants.gov. Courtesy copies of these two documents are provided with this response (2 pages and 20 pages, respectively). Although NOAA properly released all documents responsive to your request, since we are providing additional documents in response to your expanded request, we shall classify this administratively as a partial grant of your appeal.

This is the final decision of the Department of Commerce. You have the right to obtain judicial review as provided for in 5 U.S.C. § 552(a)(4)(B).

Sincerely,

Brian D. DiGiacomo
Assistant General Counsel
for Employment, Litigation, and Information

Enclosures

FORM CD-450
(REV 12/14)

U. S. DEPARTMENT OF COMMERCE

FINANCIAL ASSISTANCE AWARD

☐ GRANT ☒ COOPERATIVE AGREEMENT

FEDERAL AWARD ID NUMBER

NA16NMF4540057

RECIPIENT NAME HAWAII MARINE MAMMAL ALLIANCE INC.	PERIOD OF PERFORMANCE 06/01/2016-05/31/2019
STREET ADDRESS 622 ILIKAI ST	FEDERAL SHARE OF COST $79,988.00
CITY, STATE, ZIP CODE KAILUA HI 967341607	RECIPIENT SHARE OF COST $0.00
AUTHORITY 16 USC 661	TOTAL ESTIMATED COST $79,988.00

CFDA NO. AND NAME

11.454 , Unallied Management Projects

PROJECT TITLE

Hawaiian Monk Seal Recovery and Marine Mammal Response - Proposal 1

This Award Document (Form CD-450) signed by the Grants Officer constitutes an obligation of Federal funding. By signing this Form CD-450, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, the Form CD-450 must be signed by an authorized representative of the Recipient and returned to the Grants Officer. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Award offer and de-obligate the funds.

☒ DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS (DECEMBER 2014)

☐ R & D AWARD

☐ FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE

☒ BUREAU-SPECIFIC ADMINISTRATIVE STANDARD AWARD CONDITIONS

☒ SPECIAL AWARD CONDITIONS

☒ LINE ITEM BUDGET

☒ 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101

☐ 48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES

☒ MULTI-YEAR AWARD (PLEASE SEE THE MULTI-YEAR SPECIAL AWARD CONDITION.)

☒ DEPARTMENT OF COMMERCE PRE-AWARD NOTIFICATION REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS (REF:79 FR 78390 DECEMBER 30, 2014)

☒ OTHERS(S):

This award is being made under competitive Federal Funding Opportunity Number NOAA-NMFS-PIRO-2016-2004735 posted at Grants.gov on 11/30/2015.

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER Naabia Bannerman Grants Officer	DATE 04/27/2016
PRINTED NAME, PRINTED TITLE AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL Jon Gelman	DATE 05/02/2016

Award Details - NA16NMF4540057

Line Office:	National Marine Fisheries Service (NMFS)
Program Office:	Fisheries Pacific Islands Region Program Office (PIRO)
Award Period:	05/01/2016 - 04/30/2019
Federal Funding Amount:	$176,036.00

Project Title:

Hawaiian Monk Seal Recovery and Marine Mammal Response - Proposal 1

Project Abstract:

HMMA will address all of the objectives stated
in Priority 1 of the above referenced FFO using the following HMMA departments:
1) Oahu and Molokai-based Field Response Teams
2) Oahu and Molokai-based Stranding Teams
3) Hotline Team
4) Education Team
5) Outreach Team
The organizational structure of the proposed project is shown in Table 1 below. Detailed
descriptions and plans concerning these teams are provided in this proposal.

Recipient Information:

Recipient Name :	HAWAII MARINE MAMMAL ALLIANCE INC.
State :	HI
Congressional Distsrict :	02
Principal Investigators :	

Associated Amendments:

Amendment Number	Amendment Start Date	Amendment End Date	Federal Amount	Amendment Title	Amendment Description
Original Award	06/01/2016	05/31/2019	$79,988.00	Hawaiian Monk Seal Recovery and Marine Mammal Response - Proposal 1	HMMA will address all of the objectives stated in Priority 1 of the above referenced FFO using the following HMMA departments: 1) Oahu and Molokai-based Field Response Teams 2) Oahu and Molokai-based Stranding Teams 3) Hotline Team 4) Education Team 5) Outreach Team The organizational structure of the proposed project is shown in Table 1 below. Detailed descriptions and plans concerning these teams are provided in this proposal.
1	05/01/2016	04/30/2019	$0.00	Hawaiian Monk Seal Recovery and Marine Mammal Response - Proposal 1	HMMA will address all of the objectives stated in Priority 1 of the above referenced FFO using the following HMMA departments: 1) Oahu and Molokai-based Field Response Teams 2) Oahu and Molokai-based Stranding Teams 3) Hotline Team 4) Education Team 5) Outreach Team The organizational structure of the proposed project is shown in Table 1 below. Detailed descriptions and plans concerning these teams are provided in this proposal.

Amendment Number	Amendment Start Date	Amendment End Date	Federal Amount	Amendment Title	Amendment Description
2	05/01/2017	04/30/2018	$96,048.00	Hawaiian Monk Seal Recovery and Marine Mammal Response - Proposal 1	HMMA will address all of the objectives stated in Priority 1 of the above referenced FFO using the following HMMA departments: 1) Oahu and Molokai-based Field Response Teams 2) Oahu and Molokai-based Stranding Teams 3) Hotline Team 4) Education Team 5) Outreach Team The organizational structure of the proposed project is shown in Table 1 below. Detailed descriptions and plans concerning these teams are provided in this proposal.

Back To Search Results Search Again

TABLE OF CONTENTS

I. Funding Opportunity Description....4
A. Program Objective....4
B. Program Priorities....4
C. Program Authority....6
II. Award Information....6
A. Funding Availability....6
B. Project/Award Period....6
C. Type of Funding Instrument....7
III. Eligibility Information....7
A. Eligible Applicants....7
B. Cost Sharing or Matching Requirement....7
C. Other Criteria that Affect Eligibility....7
IV. Application and Submission Information....7
A. Address to Request Application Package....7
B. Content and Form of Application....8
C. Unique entity identifier and System for Award Management (SAM)....11
D. Submission Dates and Times....12
D. Intergovernmental Review....12
E. Funding Restrictions....12
F. Other Submission Requirements....12
V. Application Review Information....13
A. Evaluation Criteria....13
B. Review and Selection Process....14
C. Selection Factors....15
D. Anticipated Announcement and Award Dates....15
VI. Award Administration Information....16
A. Award Notices....16
B. Administrative and National Policy Requirements....16
C. Reporting....18
VII. Agency Contacts....18
VIII. Other Information....18

ANNOUNCEMENT OF FEDERAL FUNDING OPPORTUNITY

EXECUTIVE SUMMARY

Federal Agency Name(s): National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce

Funding Opportunity Title: 2016 Partnerships for Hawaiian Monk Seal Recovery and Marine Mammal Response in Hawaii

Announcement Type: Initial

Funding Opportunity Number: NOAA-NMFS-PIRO-2016-2004735

Catalog of Federal Domestic Assistance (CFDA) Number: 11.454, Unallied Management Projects

Dates: Proposals must be received at the Pacific Islands Regional Office (hereinafter, "PIRO") by 5:00 p.m. Hawaii Standard Time, February 29, 2016. Proposals received after the established deadline will be rejected and returned to the sender without consideration. For applications submitted through Grants.gov, a date and time receipt indication will be the basis of determining timeliness. The proposal must be validated by Grants.gov in order to be considered timely. Please note: Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. Applications received after the deadline will be rejected and returned to the sender without further consideration. Use of U.S. mail or another delivery service must be documented with a receipt.
For those not having access to the internet, one signed original and two hard copy applications must be received by the established due date for the program at the following address: NOAA Federal Program Officer, 2016 Partnerships for Hawaiian Monk Seal Recovery and Marine Mammal Response in Hawaii, Pacific Islands Regional Office, National Marine Fisheries Service, 1845 Wasp Blvd, Building 176, Honolulu, HI 96818. Use of U.S. mail or another delivery service must be documented with a receipt. (Note that late-arriving hard copy proposals provided to a delivery service on or before 5:00 p.m. Hawaii Standard Time on the closing date for applications will be accepted for review if the applicant can document that the proposal was provided to the guaranteed delivery service by the specified closing date and time and if the proposal is received by the PIRO no later than 5:00 p.m. Hawaii Standard Time, two business days following the closing date.) No facsimile or electronic mail proposals will be accepted. Projects are anticipated to start on or after September 1, 2016, unless otherwise directed by the NOAA Program Officer.

Funding Opportunity Description: The National Marine Fisheries Service (hereinafter, "NMFS") is soliciting competitive applications for the fiscal year 2016 Partnerships for Hawaiian Monk Seal Recovery and Marine Mammal Response. Projects are being solicited to support specific programmatic activities related to promoting the recovery of endangered Hawaiian monk seals and supporting responses to marine mammal strandings in the Hawaiian Islands.

FULL ANNOUNCEMENT TEXT

I. Funding Opportunity Description

A. Program Objective

NMFS is soliciting competitive proposals for grants and cooperative agreements that will support specific programmatic activities (including education and outreach projects) related to Hawaiian monk seal recovery or marine mammal response. Total funding available under this notice is not anticipated to exceed $180,000. Actual funding for this program is contingent upon FY 2016 Congressional appropriations. Applicants will be selected by NMFS on a competitive basis.

B. Program Priorities

Priority will be given to projects that will support specific programmatic activities related to the recovery of endangered Hawaiian monk seals and marine mammal strandings in Hawaii. Community-based and community- integrated projects and/or projects with an educational or outreach component geared to elevate public awareness and build capacity from the community level for Hawaiian monk seal recovery and marine mammal response are strongly encouraged. Applicants should ensure that proposals address one or more of the stated priorities, which are listed in no particular rank order of preference (i.e., no one factor carrying a higher priority than any another). If a project meets more than one of these priorities, applicants should list first the priority that most closely reflects the objectives of the proposed project.

Priority 1: Hawaiian monk seal recovery and response support
Priority will be placed on community engagement and capacity-building projects designed to achieve the following outcomes:
- Improve local resident understanding of, and participation in, activities that promote Hawaiian monk seal recovery, including:

- Monk seal haul-out and pupping responses
- Community stewardship of monk seals
- Community education and outreach
- Reducing human-seal interactions
- Mitigation of fishery interactions
- Promotion of sustainable fisheries
- Promotion of appropriate wildlife viewing opportunities
- Seal behavior modification
- Seal relocation within the main Hawaiian Islands

- Habitat restoration

- Develop and manage field response programs to reduce adverse human-seal interactions associated with monk seal haul-outs and pupping events and provide to NMFS seal sighting and incident reports. Priority will be given to proposals that clearly demonstrate sufficient capacity to:

- Independently receive, vet and document all monk seal sighting and incident reports via NMFS hotlines and other sources.
- Immediately and accurately refer to NMFS all reports involving possible seal injuries, alleged legal violations and other situations requiring direct NMFS staff engagement
- Dispatch project personnel, including project volunteers and local community members, to rapidly assess monk seal sighting and incident reports and provide NMFS with timely initial situational assessment information.
- Dispatch project personnel, including volunteers and local community members, to provide on-scene presence at haul-outs or pupping events to reduce adverse interactions between the public and monk seals via community-appropriate outreach activities and minimal use of temporary signage and light fencing materials.
- Develop and maintain personnel and resource capacity sufficient for comprehensive program management and administration, including internal policies and procedures for personnel safety, regulatory compliance, public relations, information management, and volunteer recruitment, retention, training, and performance evaluation.

- Host meetings with Hawaiian monk seal recovery program staff, recovery team, volunteers, partners, fishermen, and other ocean users to help build and maintain productive working relationships and facilitate effective implementation of the Hawaiian Monk Seal Recovery Plan (2007), including implementation of the Main Hawaiian Islands Monk Seal Management Plan (2015).
- Identify and describe constraints to, and opportunities for, enhanced collaboration between the NMFS Hawaiian monk seal recovery program and the local residents.
- Improve awareness and understanding among local residents regarding Hawaiian monk seal biology, endangered species status, and recovery issues and opportunities.
- Conduct the above in close collaboration with the NMFS Hawaiian monk seal recovery program and partners, and consistent with the NMFS Hawaiian Monk Seal Recovery Plan (2007).

Preference will be given to projects that address the outcomes above while also promoting other community priorities including sustainable ocean recreation and fishery-based livelihoods and traditions, and educational opportunities.

Priority 2: Hawaiian cultural awareness and participation in marine mammal response
Priority will be placed on community engagement and capacity-building projects designed to

achieve the following outcomes:
- Facilitate participation of Native Hawaiian cultural practitioners in NMFS-authorized marine mammal response activities.
- Facilitate transfer and curation of marine mammal parts for cultural educational objectives pursuant to the Marine Mammal Protection Act.
- Host and facilitate meetings and trainings with marine mammal response network members and Hawaiian cultural practitioners to help increase awareness and understanding of Native Hawaiian cultural traditions and customary practices related to marine mammals and marine mammal response activities..

- Conduct the above under the technical guidance of PIRO's marine mammal response and Hawaiian monk seal recovery program staff, and in compliance with all policies and requirements of the NMFS Marine Mammal Health and Stranding Response Program.

C. Program Authority

16 U.S.C. §661

II. Award Information

A. Funding Availability

Total funding available under this notice is not anticipated to exceed $180,000. Actual funding availability for this program is contingent upon FY 2016 Federal appropriations. Total proposed annual project costs are suggested not to exceed $80,000 per project. Award amounts will be determined by the proposals and available funds. There is no limit on the number of applications that can be submitted by the same applicant; however, multiple applications submitted by the same applicant must clearly identify different projects with specified prior accomplishments, results, and benefits. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional funding in connection with that award in subsequent years. Pre-award costs are not allowed under the award unless approved by the NOAA Grants Officer.

B. Project/Award Period

The project budget period is recommended to be 3-12 months in duration. Multi-year applications will be accepted and must include information (including detailed budget) for each year of the proposed activity. Most projects are anticipated to start on or after September 1, 2016, unless otherwise directed by the NOAA Program Officer. Where requested in the applicant's proposal and deemed reasonable by NOAA, a project may be

approved for an extension to the award period. If an application is selected for initial funding, NOAA/NMFS has no obligation to provide additional funding in connection with that award in subsequent years.

C. Type of Funding Instrument

Under this solicitation, NMFS will fund projects as grants and/or cooperative agreements. The government will be substantially involved in the management and/or operation of the program if a project is funded through a cooperative agreement. This substantial involvement may include but is not limited to partnering in collaborative efforts and/or re-direction of activities to meet regional interests. Substantial involvement may also include NMFS staff assisting in trainings; development of outreach materials and activities; development of meeting agendas and participant lists; conduct and facilitation of meetings; and recruitment, training and management of volunteers.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants are individuals, institutions of higher education, nonprofits, commercial organizations, state, local and Indian tribal governments. Federal agencies, Federal instrumentalities, or employees of Federal agencies, are not eligible to apply. The U.S. Department of Commerce, National Oceanic and Atmospheric Administration is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institution that work in underserved areas. The 2016 Partnerships for Hawaiian Monk Seal Recovery and Marine Mammal Response in Hawaii encourages proposals involving any of the above institutions.

B. Cost Sharing or Matching Requirement

No cost sharing or matching is required under the program.

C. Other Criteria that Affect Eligibility

None.

IV. Application and Submission Information

A. Address to Request Application Package

Applications are available through the Grants.gov website at http://www.grants.gov. For

those organizations without internet access, application materials and instructions may be obtained from Ms. Kara Miller, NOAA Federal Program Officer, Pacific Islands Regional Office, 1845 Wasp Blvd, Building 176, Honolulu, HI 96818.

B. Content and Form of Application

NNOAA employees (whether full-time, part-time, or intermittent) are not permitted to assist in the preparation of an application, except that staff may provide information on program goals, funding priorities, application procedures, and completion of application forms. Since this is a competitive program, NOAA employees will not provide assistance in conceptualizing, developing, or structuring proposals, or write letters of support for a proposal. Applications must include all content items and form requirement referenced below. Failure to do so may result in the application being returned without review. Where the responsible party is an eligible nonprofit organization, which has not previously received NOAA support, it must submit proof of its status with its application. Any of the following would give evidence of such status:

- A reference to the applicant in the Internal Revenue Service's most recent list of tax-exempt organizations under Section 501(c) of the IRS Code;
- A copy of a currently valid IRS tax exemption certificate on which the applicant is named;
- A statement from a state taxing authority or state's attorney general certifying that the applicant has non-profit status and that none of the net earnings accrue to any private shareholder;
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status; or
- Any of the above proof regarding a parent organization, if one exists, and a statement signed by the parent organization that the applicant is a local nonprofit affiliate.

Proposals must include a project narrative giving detail on the proposed work to be performed by the recipient, how it plans to accomplish such tasks, and its related benefits and monetary costs. Proposals may not exceed 30 pages of double-spaced, white 8-1/2" x 11" paper exclusive of the required Application for Federal Assistance forms and documentation described below. A minimum 12-point font size is required. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations are not included in this 30-page limitation. Abbreviated CVs or resumes should be appended to each application; appended material must not exceed a total of 25 pages in length and can include any letters of endorsement, an indirect cost rate agreement, permit information, or any other supporting information. All information needed for a comprehensive review of the proposal should be found in the project narrative and required federal financial assistance application forms described below. The edition of the forms contained at the Grants.gov website or provided by NOAA in response to a request for hard

copy must be used.
The following forms are required as part of each application: Application for Federal Assistance (SF-424); Budget Information, Non-Construction Programs (SF-424A); Assurances, Non-Construction Programs (SF-424B); Certification Regarding Lobbying (CD-511); and, if applicable, Disclosure of Lobbying Activities (SF-LLL). These forms are available for download from the NOAA Grants Online application package.
Proposals must include the following information:
1. Title Page
This page shall provide the project title, project duration, applicant name(s), name(s) of the Project Manager and any Co-Managers, complete contact information (address, telephone, fax, email, and phone number) of the applicant(s), the program priority addressed in the proposal, and a statement regarding the Federal, non-Federal, and total costs of the project.
2. Project Summary
Provide a brief summary of the project goals and objectives, the program priority and associated outcomes to be addressed (see Section I.B. above), the proposed activities, the geographic area where the project would occur, and expected outcomes and benefits of the proposed activities. This summary may be posted on our website if the project is funded.
3. Project Description
Describe the project activities completely and accurately. The Project Description should be a clear statement of all work to be undertaken and must include the information listed below in (a)-(g). Multi-year applications must include such information for each year of the proposed activity.

a. Goals and Objectives: Identify one (and only one) program priority (either priority 1 or 2 in Section 1.B above). State expected project accomplishments and their significance to the stated program priority. Objectives should be attainable within the specified time period and with the available monetary and human resources. Objectives should be simple, understandable, and as specific and quantitative as possible.
b. Project Management: Describe how the proposed project will be organized and managed, including financial management of the project. Describe who will be responsible for carrying out project activities. The lead organization/individual and person listed as the technical contact should be identified as the Project Manager (PM). Use of sub-contractors or volunteer staff time to complete project activities and oversight of those individuals should be discussed. The PM is responsible for all technical oversight and implementation of the approved work plan as delineated in the proposal. One PM must be designated on each project, but the PM may or may not be the applicant. However, if the applicant is not the PM, there must be an explanation of the relationship between the applicant and PM (e.g., applicant will be responsible for managing the grant funds and the PM will be responsible for completing the project milestones on time and within budget, etc.). Project participants or

organizations that will have a significant role in conducting the project should be listed as Co-Managers. Organizations or individuals that support the project, for example, researchers contributing data or materials, should be referred to as Cooperators. Copies of the PM's and all Co-Manager's current resumes or curricula vitae must be included as appendices.

c. Project Description: Describe the technical plan of activities that will be accomplished to meet the proposed project goals and objectives. Include detailed descriptions of activities, collaborators, milestones, and expected products resulting from the completed project. The description should include:

i. Project activities and how they relate to the project's goals and objectives.

ii. A list of the activities that will be conducted by project personnel, volunteers, community members, etc. Describe the oversight of volunteers and how their time will be used to complete project activities.

iii. List project milestones and a description of the specific activities and associated timelines necessary to meet them. Describe the timelines in increments (e.g., month one, month two, etc.), rather than by specific dates. Please provide an explanation if dates are necessary. Make sure the timelines are reasonable and reflect your overall project period. Specify the quantitative and/or qualitative evaluation criteria to determine the relative success or failure of the project in achieving the stated project goals, objectives, and milestones.

iv. Identify the outcomes, results, or products, and how they relate to the program priorities. Describe how the project outcomes, results, or products will be applied and/or made available to any appropriate user groups through outreach and education efforts.

v. Need for Government financial assistance: Demonstrate the need for government financial assistance. List all other sources of funding that are or have been sought for the project.

vi. Federal, State and local government activities: List any plans or activities (Federal, State, or local government activities) this project would affect and describe the relationship between the proposed project and those plans or activities.

vii. If this is a re-submission of a previously grant application, include a brief description of how the new proposal has been revised in response to reviewer comments.

d. Participation by persons or groups other than the applicant: Describe how governmental and non-governmental entities will participate in the project and the nature of their participation.

4. Organizational Summary – Three page limit

Provide a summary of your organization and any current role it plays in addressing the stated program priorities. The summary should include an overview of personnel (number of paid staff, volunteers, researchers, etc.); a summary of relationships with relevant partners; and a financial overview of your organization, including what funds are available for the proposed work.

5. Data Sharing Plan – Two page limit

Provide a data sharing plan that includes descriptions of the types of project data and information expected to be created during the course of the project; the tentative date by which data will be shared; the standards to be used for data/metadata format and content; policies addressing data stewardship and preservation; procedures for providing access, sharing, and security; and prior experience in publishing such data.

6. Total project costs and budget justification

Each application must include clear and concise budget information, both on the required Federal forms and in the narrative detail of this section. Multi-year applications must include budget information for each year of the proposed activity.

Applications must include OMB standard form 424A, "Budget Information - Non Construction Programs." All instructions should be read before completing the form, and the amounts per category and total amounts indicated on the form should correspond with amounts indicated in the budget narrative and justification.

On a separate sheet or spreadsheet, list itemized costs per category and the corresponding Federal and non-Federal share and direct and indirect cost totals. Describe and justify the requested budget. For the non-Federal share, the itemized costs should be separated into cash and in-kind contributions. If in-kind contributions are included, describe briefly the basis for estimating the value of these contributions.

7. Appendices

Abbreviated curricula vitae or resumes of the PM and any Co-Managers should be included with the application. Additional material that is necessary or useful to the description of the project may also be provided (e.g., letters of endorsement, tables or visual materials). Letters of endorsement are strongly recommended.

C. Unique entity identifier and System for Award Management (SAM)

Applicants should be aware that, they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 Federal Register, Vol. 67, No. 210, pp. 66177-66178 for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711 or via the internet (http://www.dunandbradstreet.com).

To enable the use of a universal identifier and to enhance the quality of information available to the public as required by the Federal Funding Accountability and Transparency Act of 2006, to the extent applicable, any proposal awarded in response to this announcement will be required to use the Central Contractor Registration, now located within the System for Award Management (SAM) portal at www.sam.gov, and Dun and Bradstreet Universal Numbering System and be subject to reporting requirements, as identified in OMB guidance published at 2 CFR Parts 25 and 170 (2012), (see http://www.gpo.gov/fdsys/pkg/CFR-2012-

title2-vol1/pdf/CFR-2012-title2-vol1- subtitleA.pdf.

D. Submission Dates and Times

Proposals must be received at the Pacific Islands Regional Office by 5:00 p.m. Hawaii Standard Time, [insert 90 days from date of publication] 2016. Proposals received after the established deadline will be rejected and returned to the sender without consideration. For applications submitted through Grants.gov, a date and time receipt indication will be the basis of determining timeliness. The proposal must be validated by Grants.gov in order to be considered timely. It may take Grants.gov up to two (2) business days to validate or reject the application. Please keep this in mind in developing your submission deadline.
For those not having access to the internet, one signed original and two hard copy applications must be received by the established due date for the program at the following address: NOAA Federal Program Officer, 2016 Partnerships for Hawaiian Monk Seal Recovery and Marine Mammal Response in Hawaii, Pacific Islands Regional Office, National Marine Fisheries Service, 1845 Wasp Blvd, Building 176, Honolulu, HI 96818. Use of U.S. mail or another delivery service must be documented with a receipt. (Note that late-arriving hard copy proposals provided to a delivery service on or before 5:00 p.m. Hawaii Standard Time on the closing date for applications will be accepted for review if the applicant can document that the proposal was provided to the guaranteed delivery service by the specified closing date and time and if the proposal is received by the PIRO no later than 5:00 p.m. Hawaii Standard Time, two business days following the closing date.)
No facsimile or electronic mail proposals will be accepted. Projects are anticipated to start on or after September 1, 2016, unless otherwise directed by the NOAA Program Officer.

E. Intergovernmental Review

Applications submitted by state and local governments are subject to the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." Any applicant submitting an application for funding is required to complete item 16 on the SF-424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out about and comply with a State's process under EO 12372, the names, addresses and phone numbers of participating SPOC's are listed in the Office Management and Budget's home page at www.whitehouse.gov/omb/grants/spoc.html.

F. Funding Restrictions

Applicants cannot be reimbursed for time expended or costs incurred in developing a project or preparing the application.

G. Other Submission Requirements

Permits, Pre-approvals, and Clearances: The applicant is required to obtain the necessary permits, approvals and/or clearances that authorize the actions and activities required to carry out the project as proposed. This shall include meeting the requirements of applicable Federal law and all local regulations. To ensure that such permits, approvals, and clearances, where required, are obtained prior to the release of funds to the recipient, specific requirements in the form of Special Award Conditions may be attached to the NOAA award documents.

When requested, the applicant must be available to respond to questions during all phases of review and evaluation of applications.

V. Application Review Information

A. Evaluation Criteria

Two technical review panels will be convened - one panel for each of the two program priorities. The applications will be evaluated under either program priority number 1 or 2 depending on which priority is specified in the project proposal. Applications will not be evaluated under more than one program priority. Each panel will evaluate proposals by assigning scores up to the maximum indicated for each of the criteria below.

1. Importance and/or Relevance and Applicability of Proposed Project to Program Objective and Priority (40%). This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NMFS, Federal, regional, state, or local activities. Applications will be evaluated to determine if the project goals and objectives are: clear; relate to project activities; and relate to the program's funding priorities (Section 1.B above). Reviewers should consider: the likelihood of meeting project milestones and achieving anticipated results in the stated time period; the contribution of potential outcomes, results, or products; and the extent of local community participation and collaboration.

2. Technical/Scientific Merit (20%). This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. Proposals should provide a clear definition of the project design, strengths and/or weaknesses and the means that are to be employed for securing productive results (e.g., evaluation criteria). Proposals should have sufficient information to enable Reviewers to provide a technical evaluation of the project. The evaluation will be based upon the strengths and/or weaknesses of the technical design relative to obtaining productive and meaningful results.

3. Overall Qualifications of the Applicants (20%). This criterion ascertains whether the applicant possesses the necessary education, experience, facilities, and administrative resources to accomplish the project. Reviewers will consider previous related performance,

experience and qualifications of the project's PM, Co-Manager(s) and other personnel, including designated contractors, consultants, and cooperators. Reviewers will also consider past award performance of the applicant(s) and PM and whether the proposed project is a status quo continuation of past efforts under a previous award or if it is expected to achieve new or enhanced project results or outcomes.

4. Project Costs (10%). This criterion evaluates the budget to determine if it is realistic and commensurate with the project needs and time-frame. This includes reviewing the reasonableness of the costs associated with the required tasks to be performed, and the overall relationship with the cost effectiveness for successfully completing the project. Itemized costs and the overall budget must be justified and appropriately allocated.

5. Outreach and Education (10%). This criterion assesses whether the project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources. Applications will be evaluated on whether project results or products will be shared appropriately given the nature of the proposed work and whether sufficient detail is provided to make this determination. Depending on the nature of the project, outreach and education may include: postings on websites and social media, presentations meetings and community events, development of brochures, education materials or training manuals. Proposals should be rated on whether the outreach/education discussed is appropriate for the type and nature of the proposal and whether the outreach/education is expected to be effective.

B. Review and Selection Process

Review and selection of applications will take place in four steps: initial evaluation, technical review, merit review, and final selection by the Selecting Official (i.e., the Regional Administrator for NOAA Fisheries, PIRO).

1. Initial Evaluation of the Applications. An initial screening and evaluation of applications will be conducted to ensure that application packages have all required forms and application elements, clearly relate to the 2016 Pacific Partnerships for Hawaiian Monk Seal Recovery and Marine Mammal Response in Hawaii, and meet all of the eligibility criteria.

2. Technical Review. Proposals meeting the requirements of this solicitation will then undergo technical review. Each proposal will be reviewed by technical reviewers who will independently evaluate and score it using the evaluation criteria provided in section V.A. (Evaluation Criteria) above. Technical reviewers will be individuals with appropriate subject- matter expertise and may be from Federal or state agencies, academic institutions, or non- profit organizations. The technical reviewers' ratings will be used to produce a rank order of the proposals.

3. Merit Review. A merit review panel will conduct a merit review after the technical review. Merit reviewers will determine recommendations for funding based upon technical review scores and comments, and application materials. Merit reviewers will take into

consideration the following factors; 1. the amount of collaboration proposed with other projects and organizations working in partnership with NMFS in addressing the program priorities; and 2. the applicant's prior award performance and demonstration of project accomplishments, if applicable. Justifications will be given for any recommendations that fall outside the technical review ranking or for any cost adjustments. Proposals recommended for funding will be ranked.

4. Final Selection.

After applications have undergone technical and merit review, the Selecting Official will make the final decision regarding which applications will be funded based upon the numerical rankings and evaluations of the applications.

If the Selecting Official accepts a proposal and/or a grant application for a project not in accordance with the rank given or the recommendation of the merit review panel, the Selecting Official will consult with the Federal Program Officer and provide a detailed written explanation of the reasons for the action based on the selection factors below. The authority for approving a grant award for projects rests solely with NMFS.

C. Selection Factors

The merit review ratings shall provide a rank order to the Selecting Official for final recommendation to the NOAA Grants Officer. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based on one or more of the following factors:

1. Availability of funds.
2. Balance/distribution of funds:
(a) geographically,
(b) by type of institutions,
(c) by type of patterns,
(d) by research areas, and
(e) by project types.
3. Whether this project duplicates other projects funded or considered for funding by NOAA or other federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance and demonstration of project accomplishments.
6. Partnerships and/or participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

D. Anticipated Announcement and Award Dates

Subject to the availability of funds, review of proposals should occur during March and/or

April 2016. Projects would be anticipated to start on or after September 1, 2016, unless otherwise directed by the Program Officer.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification that the application has been recommended for funding to the NOAA Grants Management Division. This notification is not an authorization to begin performance of the project. Official notification of funding, signed by the NOAA Grants Officer, is the authorizing document that allows the project to begin. Notifications will be issued to the Authorizing Official and the Project Manager of the project either electronically or in hard copy. Unsuccessful applicants will be notified that their proposal was not selected for recommendation. Unsuccessful applications will be returned to the applicant upon request.

To enable the use of a universal identifier and to enhance the quality of information available to the public as required by the Federal Funding Accountability and Transparency Act of 2006, to the extent applicable, any proposal awarded in response to this announcement will be required to use the Central Contractor Registration, now located within the System for Award Management (SAM) portal at www.sam.gov, and Dun and Bradstreet Universal Numbering System and be subject to reporting requirements, as identified in OMB guidance published at 2 CFR Parts 25 and 170 (2012), (see http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1- subtitleA.pdf.

The Federal Funding Accountability and Transparency Act of 2006 includes a requirement for awardees of applicable Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards issued in FY 2016 or later. All awardees of applicable grants and cooperative agreements are required to report to the Federal Subaward Reporting System (FSRS) available at www.FSRS.gov on all subawards over $25,000.

B. Administrative and National Policy Requirements

1. Department of Commerce Pre-Award Notification Requirements.

Administrative and national policy requirements for all Department of Commerce awards are contained in the Department of Commerce Pre-Award Notification. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the Federal Register notice of December 30, 2014 (79 FR 78390) are applicable to this solicitation and may be accessed online at http://www.gpo.gov/fdsys/pkg/FR-2014-12-30/pdf/2014-30297.pdf.

2. Limitation of Liability.
Funding for programs listed in this notice is contingent upon the availability of FY 2016 Federal appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

3. Universal Identifier.
Applicants should be aware that, they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 Federal Register, Vol. 67, No. 210, pp. 66177-66178 for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711 or via the internet (http://www.dunandbradstreet.com).

4. National Environmental Policy Act (NEPA).
If recommended for funding, applicants whose proposed projects may have an environmental impact will be asked to furnish sufficient information to assist NOAA in assessing the potential environmental consequences of supporting the project.
NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: http://www.nepa.noaa.gov/, including our NOAA Administrative Order 216-6 for NEPA, http://www.nepa.noaa.gov/NAO216_6.pdf, NEPA Questionnaire, http://www.nepa.noaa.gov/questionnaire.pdf, and the Council on Environmental Quality implementation regulations, http://ceq.hss.doe.gov/nepa/regs/ceq/toc_ceq.htm.

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified

adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

5. If an applicant has not previously established an indirect cost rate with a Federal agency they may choose to negotiate a rate with the Department of Commerce or use the de minimis indirect cost rate of 10% of MTDC (as allowable under 2 C.F.R. §200.414). The negotiation and approval of a rate is subject to the procedures required by NOAA and the Department of Commerce Standard Terms and Conditions Section B.06. The NOAA contact for indirect or facilities and administrative costs is:

Lamar Revis, Grants Officer
NOAA Grants Management Division
1325 East West Highway
9th Floor
Silver Spring, Maryland 20910
lamar.revis@noaa.gov

C. Reporting

Grant recipients will be required to submit financial and performance (technical) reports. All financial reports shall be submitted to the NOAA Grants Officer via NOAA's Grants Online. Performance reports should be submitted to the NOAA Program Officer (Ms. Kara Miller, Pacific Islands Regional Office). Electronic submission of performance reports via NOAA's Grants Online web based software is preferred method and is strongly encouraged; however in special circumstances the Program Officer will accept hard copies. All reports will be submitted in accordance with the NOAA Special Award Conditions and terms of this award. The comprehensive final report is due 90 days after the award expiration.

VII. Agency Contacts

If you have any questions regarding this proposal solicitation, please contact Ms. Kara Miller at the NOAA/NMFS Pacific Islands Regional Office, 1845 Wasp Blvd, Building 176, Honolulu, HI 96818, by phone at 808-725-5056, or by email at Kara.Miller@noaa.gov.

VIII. Other Information

Freedom of Information Act

U.S. Department of Commerce regulations implementing the Freedom of Information Act (FOIA) are found at 15 C.F.R. Part 4, "Public Information." These regulations set forth rules for the Department regarding making requested materials, information, and records publicly available under the FOIA. Applications submitted in response to this Federal Funding Opportunity may be subject to requests for release under the Act. In the event that an application contains information or data that the applicant deems to be confidential commercial information which is exempt from disclosure under FOIA, that information should be identified, bracketed, and marked as "Privileged, Confidential, Commercial or Financial Information." Based on these markings, the confidentiality of the contents of those pages will be protected to the extent permitted by law.

Data Sharing

Environmental data and information, collected and/or created under NOAA grants/cooperative agreements must be made visible, accessible, and independently understandable to general users, free of charge or at minimal cost, in a timely manner (typically no later than two (2) years after the data are collected or created), except where limited by law, regulation, policy or by security requirements.

a. Data/Information Sharing Plan of no more than two pages as described in Section IV.B.5 shall be required as an appendix. A typical plan may include the types of environmental data and information to be created during the course of the project; the tentative date by which data will be shared; the standards to be used for data/metadata format and content; policies addressing data stewardship and preservation; procedures for providing access, data, and security; and prior experience in publishing such data. The Data/Information Sharing Plan will be reviewed as part of the NOAA Standard Evaluation Criteria, Item 1 -- Importance and/or Relevance and Applicability of Proposed Project to the Mission Goals.

b. The Data/Information Sharing Plan (and any subsequent revisions or updates) will be made publicly available at time of award and, thereafter, will be posted with the published data.

c. Failing to share environmental data and information in accordance with the submitted Data/Information Sharing Plan may lead to disallowed costs and be considered by NOAA when making future award decisions. Additionally, PIs must indicate how and when they have made their data accessible and usable by the community in the past. Information on NOAA's Data Management Policy is available under:
http://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_212/212-15.pdf

Felony and Tax Certifications for Corporations

In accordance with current Federal appropriations law, NOAA will provide a successful corporate applicant a form to be completed by its authorized representatives certifying that the corporation has no Federally-assessed unpaid or delinquent tax liability or recent felony criminal convictions under any Federal law."

From: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Sent: Tuesday, May 23, 2017 6:26 AM
To: Mark Graff - NOAA Federal
Cc: foia@erulemaking.net; Lola Stith - NOAA Affiliate
Subject: RE: FOIA Assignment for DOC-NOAA-2017-001200

(b)(5) [redacted]!

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Monday, May 22, 2017 10:15 AM
To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Cc: foia@erulemaking.net; Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Subject: Re: FOIA Assignment for DOC-NOAA-2017-001200

(b)(5) [redacted])?

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [redacted] (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 Fri, May 19, 2017 at 2:52 PM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

(b)(5) [redacted]?

From: foia@regulations.gov [mailto:foia@regulations.gov]
Sent: Friday, May 19, 2017 9:20 AM
To: arlyn.penaranda@noaa.gov
Subject: FOIA Assignment for DOC-NOAA-2017-001200

You have been assigned to the FOIA request DOC-NOAA-2017-001200. Additional details for this request are as follows:

- Assigned By: Samuel B. Dixon
- Request Tracking Number: DOC-NOAA-2017-001200

- Due Date: 06/16/2017
- Requester: Meera Gajjar
- Request Track: Simple
- Short Description: N/A
- Long Description: Please see attachment for full response Under the Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of information as detailed below on behalf of the National Whistleblower Center (NWC), a nonprofit organization focused on advocating for whistleblowers. 1. I am requesting any and all documents regarding the Lacey Act Reward Fund and/ or the Lacey Act Reward Account (hereinafter referred to as the "Lacey Act Reward Fund" or "Fund"). In particular, I am requesting: a. Any and all documents regarding the Fund's creation (including but not limited to the specific information that established the Fund as a lawful entity within the Department of Commerce and/ or the National Marine Fisheries Service. b. The Fund's annual budget (including all income, all expenses, and all payments for FY2012, FY2013, FY2014, FY2015, and FY2016). We request that all incoming funds and rewards paid, if applicable, be identified for each enforcement action. c. Any rules/ regulations/ guidance documents regarding the administration of the Fund. d. A Copy of any internal report within the Department of Commerce that discusses the Fund. 2. I am also requesting any and all documents regarding NOAA's Asset Forfeiture Fund (hereinafter referred to as "AFF"). In particular, I am requesting: a. Any and all documents regarding the Fund's creation (including but not limited to the specific information that established the Fund as a lawful entity within the Department of Commerce and/ or the National Marine Fisheries Service. b. The Fund's annual budget (including all income, all expenses, and all payments for FY2012, FY2013, FY2014, FY2015, and FY2016). We request that all incoming funds and rewards paid, if applicable, be identified for each enforcement action. c. Any rules/ regulations/ guidance documents regarding the administration of the Fund. d. A Copy of any internal report within the Department of Commerce that discusses the Fund.

From: Mail Delivery Subsystem <mailer-daemon@googlemail.com>
Sent: Tuesday, May 23, 2017 11:07 AM
To: mark.graff@noaa.gov
Subject: Delivery Status Notification (Delay)
Attachments: details.txt; Re: FOIA Assignment for DOC-NOAA-2017-001200

Delivery incomplete

There was a temporary problem delivering your message to **foia@erulemaking.net**. Gmail will retry for 47 more hours. You'll be notified if the delivery fails permanently.

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The response was:

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The recipient server did not accept our requests to connect. Learn more at
https://support.google.com/mail/answer/7720 [erulemaking.net 69.64.146.224: timed out]
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Reporting-MTA: dns; googlemail.com
Arrival-Date: Mon, 22 May 2017 07:15:44 -0700 (PDT)
X-Original-Message-ID:
<CAFHw6A8LmnWgYui64byxALHUqE7AkQukLnpB2CKX+BwEmze1kQ@mail.gmail.com>

Final-Recipient: rfc822; foia@erulemaking.net
Action: delayed
Status: 4.4.1
Diagnostic-Code: smtp; The recipient server did not accept our requests to connect. Learn more at
https://support.google.com/mail/answer/7720
[erulemaking.net 69.64.146.224: timed out]
Last-Attempt-Date: Tue, 23 May 2017 08:07:01 -0700 (PDT)
Will-Retry-Until: Thu, 25 May 2017 07:15:44 -0700 (PDT)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Mon, 22 May 2017 10:15:03 -0400
Subject: Re: FOIA Assignment for DOC-NOAA-2017-001200
To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Cc: foia@erulemaking.net, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

(b)(5) [redacted])?

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [redacted] (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 Fri, May 19, 2017 at 2:52 PM, Arlyn Penaranda - NOAA Federal <
arlyn.penaranda@noaa.gov> wrote:

(b)(5) [redacted]
>
>
>
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> *Sent:* Friday, May 19, 2017 9:20 AM
> *To:* arlyn.penaranda@noaa.gov
> *Subject:* FOIA Assignment for DOC-NOAA-2017-001200
>
>
>
> You have been assigned to the FOIA request DOC-NOAA-2017-001200.
> Additional details for this request are as follows:
>
> - Assigned By: Samuel B. Dixon
> - Request Tracking Number: DOC-NOAA-2017-001200
> - Due Date: 06/16/2017
> - Requester: Meera Gajjar
> - Request Track: Simple
> - Short Description: N/A
> - Long Description: Please see attachment for full response Under the
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> d. A Copy of any internal report within the Department of Commerce that
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> paid, if applicable, be identified for each enforcement action. c. Any
> rules/ regulations/ guidance documents regarding the administration of the
> Fund. d. A Copy of any internal report within the Department of Commerce
> that
----- Message truncated -----

From: Laurie Mukai - NOAA Federal <laurie.mukai@noaa.gov>
Sent: Tuesday, May 23, 2017 5:11 PM
To: Lola Stith - NOAA Affiliate; Mark Graff - NOAA Federal
Cc: Shawn Martin - NOAA Federal
Subject: Fwd: NOAA Fisheries FOIA from The Conservation Angler
Attachments: NOAAFOIATCA - Revised 5-17-17 - FINAL COMPLETE.pdf; The Conservation Angler - Scientific Advisors.pdf

Dear Lola and Mark-

I received this email today from David Moskowitz, the requester of FOIA DOC-NOAA-2017-001139. (b)(5) [redacted]

[redacted]

If you have any questions, please let me know.

Thank you,
Laurie

--
Laurie Mukai
NOAA/NMFS/NWFSC
2725 Montlake Blvd. East
Seattle, WA 98112.2097
206.860.3438
206.860.3217 fax
laurie.mukai@noaa.gov
http://www.nwfsc.noaa.gov

---------- Forwarded message ----------
From: **David Moskowitz** <theconservationangler@gmail.com>
Date: Tue, May 23, 2017 at 1:47 PM
Subject: NOAA Fisheries FOIA from The Conservation Angler
To: Laurie Mukai - NOAA Federal <laurie.mukai@noaa.gov>

Dear Ms. Mukai:

By this email, with attachments, the Conservation Angler hereby withdraws our original FOIA Request (DOC-NOAA-2017-001139) and submits a new, revised FOIA Request to NOAA Fisheries.

Please call me or email me if you have any questions.

Sincerely,

David A. Moskowitz
Executive Director
The Conservation Angler
971-235-8953

May 17, 2017

National Oceanic and Atmospheric Administration
National Marine Fisheries Service (NOAA Fisheries)
NOAA/NMFS/NWFSC
Attn: Laurie Mukai, FOIA Coordinator
2725 Montlake Blvd. East
Seattle, WA 98112-2097
laurie.mukai@noaa.gov

VIA E-MAIL ATTACHMENT – CONFIRMATION REQUESTED

RE: Freedom of Information Act Request DOC-NOAA-2017-001139 [Withdrawal]
Freedom of Information Act Request [New and Revised as Described Below]

Dear Ms. Mukai:

The Conservation Angler (TCA) is a "doing business as" subsidiary of Wild Salmon Rivers, a 501(c)(3) nonprofit organization that works to protect and conserve wild steelhead and salmon and the wild river environments they depend upon. TCA writes to NOAA today withdrawing FOIA No. DOC-NOAA-2017-0001139, and hereby submits a new, revised FOIA request as noted below:

1. TCA hereby withdraws the pending request (FOIA No. DOC-NOAA-2017-0001139).

2. TCA hereby makes a new FOIA request because TCA is expanding the geographic, time and subject matter scope of the data we are seeking, as well as clarifying just what documents we are seeking.

3. TCA is narrowing the scope of which NOAA staff's information we are seeking.

4. TCA is trying to facilitate a timely response from NOAA because time is of the essence.

5. TCA is also addressing the fee waiver issue concerns NOAA raised in denying the fee waiver request for FOIA No. DOC-NOAA-2017-0001139, in lieu of appealing that denial.

Based upon the reasons noted above, TCA is now requesting—with changes from the now-withdrawn FOIA request No. DOC-NOAA-2017-0001139 underscored to assist in identifying the changes—pursuant to FOIA:

All documents regarding the rate of conversion (*i.e.* passage loss, natural mortality, unaccounted for harvest, or other non-harvest sources of mortality) of Passive Integrated Transponder (PIT)-tagged adult salmon and steelhead between Bonneville dam on the Columbia River and the Lower Granite dam on the Snake River during the period from January 1, 2012 to the date of the agency's search for documents responsive to this request, specifically including (but not limited to):

- **Emails, notes, and other correspondence between and among "NOAA West Region Fisheries Staff working on Columbia and Snake Basin ESA-listed salmon and steelhead recovery, sustainable fisheries, hydropower and fish passage, salmon and steelhead hatchery, harvest and protected resource issues, and the NOAA Northwest Fisheries Science Center and the Technical Advisory Committee to the *United States v. Oregon* proceeding that relate to salmon and steelhead conversion;**

- **Internal reports, conclusions, analysis and studies of the rate of salmon and steelhead conversion and their relationship to forecasting pre-season salmon and steelhead abundance, allocating harvest to non-treaty and treaty fisheries, allocating ESA-impacts to those fisheries, and evaluating both in-season harvest reporting and post-season harvest analysis, and the effects of conversion on meeting escapement goals for ESA-listed salmon and steelhead.**

"All documents" includes, but is not limited to, all correspondence, permits, permit applications, agreements, contracts, minutes, memoranda, plans, e-mails, reports, citations to publicly available reports, databases, and notes. This request includes all documents that have ever been within the custody or control of the National Marine Fisheries Service (NOAA Fisheries), whether they exist in agency "working," investigative, retired, electronic mail, or other files currently or at any other time.

TCA requests these records in light of the President's "Memorandum for the Heads of Executive Departments and Agencies" dated January 21, 2009, which states,

> [FOIA] should be administered with a clear presumption: In the face of doubt, openness prevails. . . . In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public.

74 Fed. Reg. 4683 (Jan. 21, 2009). This request is being sent to the NOAA Fisheries FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments that have pertinent information.

REQUEST FOR FEE WAIVER

Pursuant to FOIA's fee waiver provision, 5 U.S.C. § 552(a)(4)(A)(iii), and the Department of Commerce's FOIA regulations at 15 C.F.R. Part 4, TCA requests that NOAA Fisheries waive all fees in connection with procurement of the requested records. As demonstrated below, the nature of this request meets FOIA's test for fee waiver.

The factors NOAA Fisheries must consider in deciding a fee waiver request are laid out in 15 C.F.R. § 4.11(*l*), and those relating to a significant contribution to public understanding of the operations or activities of the government can be summarized as follows:

> (1) Whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the Agency.
>
> (2) Whether the contents of the records to be disclosed have an informative value.
>
> (3) Whether the disclosure of the information will likely contribute to an understanding of the subject by the general public.
>
> (4) Whether the contribution to public understanding is significant.

See 15 C.F.R. § 4.11(*l*)(2). These factors are to be balanced against one another; no one factor is determinative. *See Friends of the Coast Fork v. U.S. Dep't of Interior*, 110 F.3d 53, 55 (9th Cir. 1997).

The other requirements in the regulations—related to whether the requester has a commercial interest that outweighs a public interest motivation—are not applicable to TCA and this request. *See* 15 C.F.R. § 4.11(*l*)(3). Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See, e.g.,* OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. TCA does not seek information from NOAA Fisheries for commercial gain or interest. As a 501(c)(3) nonprofit organization, TCA has no commercial interest in NOAA Fisheries' activities or consultations with the Northwest Treaty Indian Tribes regarding fishery enforcement activities related to the federal Endangered Species Act (ESA) or with regard to NOAA Fishery communications or activities with other Columbia River Fishery Co-managers in Washington or Oregon State waters. The materials sought in this FOIA request will be disseminated by TCA to its members, through its website, <u>through all of TCA's modern social media venues</u> and to the press and the general public at no cost.

In deciding whether the fee waiver criteria are satisfied, TCA respectfully reminds NOAA Fisheries that FOIA is inclined toward disclosure, and that the fee waiver amendments

were enacted to allow further disclosure to nonprofit, public interest organizations to foster government transparency. *See, e.g.*, 132 Cong. Rec. S. 14270-01 (statement of Sen. Leahy) ("[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information."). Furthermore, courts, including the Ninth Circuit Court of Appeals, have interpreted the FOIA fee waiver broadly. *See, e.g.*, *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (holding that the FOIA fee waiver "is to be liberally construed in favor of waivers for noncommercial requesters").

I. <u>The present disclosure is in the public interest because it is likely to significantly contribute to public understanding of the operations or activities of government.</u> (15 C.F.R. § 4.11(*l*)(2))

The requested disclosure will significantly contribute 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*).

A. The subject of the disclosure concerns "identifiable operations or activities of the Federal Government." (15 C.F.R. § 4.11(*l*)(2)(i))

The requested information pertains to NOAA Fisheries' co-management activities with Washington State fish and wildlife managers as well as activities of the Columbia River Treaty Indian Tribes necessitated by NOAA Fisheries' responsibilities under the Endangered Species Act (ESA), regarding the potential effects of harvest and illegal harvest of ESA-listed populations of Columbia and Snake River steelhead and salmon species. NOAA Fisheries is a division of the National Oceanic and Atmospheric Administration and the United States Department of Commerce. NOAA Fisheries is responsible for the stewardship and management of the nation's living marine resources and their habitat within the United States' Exclusive Economic Zone, which extends seaward 200 nautical miles from the coastline. As part of that responsibility, and pursuant to the ESA, NMFS consults with federal agencies about the potential adverse impacts of federal activities on threatened and endangered marine species. Such federal activities include, *inter alia*, ESA Take Permits issued to commercial and recreational fisheries in Washington State, conducted with Oregon and the Columbia River Treaty Tribes.

It is irrefutable that NOAA Fisheries' permitting and consultation guidance concerning commercial and recreational salmon and steelhead fisheries in both marine and freshwater environments under the ESA and the potential harm to listed marine species is a clearly identifiable operation of the government. As part of NOAA Fisheries' duty under the ESA, issuing permits to state and Tribal co-managers to conduct commercial and recreational fisheries that result in "take" as defined by the ESA necessarily results in enforcement activities related to these "take" prohibitions as well as ESA recovery activities and progress towards meeting Recovery Plan goals and objectives. Inter-agency consultation is a clearly identifiable operation and activity of the government. The requested information, which to TCA's knowledge is not available publicly at any NOAA website or public reading room, relates to NOAA Fisheries' management and oversight of its responsibility for the survival and recovery of anadromous fish species under the ESA because it will illuminate how NOAA Fisheries is evaluating the rate of salmon and steelhead conversion, communicating with other entities regarding such evaluations, and using its knowledge of conversion rates to inform other management activities, such as

enforcing closures of fisheries or otherwise exercising its power under the ESA to ensure the survival of migrating salmon and steelhead. Consequently, the requested information concerns NOAA Fisheries' operations and activities.

B. The information requested is meaningfully informative about government operations or activities and disclosure is likely to contribute to an understanding of the subject by the public of government operations or activities. (15 C.F.R. §§ 4.11(*l*)(2)(ii) and (iii))

As discussed, the requested information relates to NOAA's evaluation of fish migration in the Columbia River and how it uses such information in its decisions how best to ensure the survival and recovery of ESA-listed anadromous fish species, and it will provide the public with a better understanding of the nature of NMFS's ESA enforcement and consultation guidance concerning commercial and recreational fisheries and harm to marine species such as steelhead and salmon, and specifically how activities permitted under ESA permits may impact native Washington or Oregon marine species. TCA is a non-profit organization that informs, educates and counsels the public—via legal action, our websites (http://www.wildsalmonrivers.org/ and http://www.theconservationangler.com) , our direct communications to our members, by disseminating information to the press and other interested members of the public, and through participation in coalitions working on the same mission to protect wild steelhead and salmon, on the harm done to the environment by poorly regulated commercial and recreational fishing. Accordingly, TCA is an effective vehicle to disseminate information on commercial and recreational fishing that harms the species and their environment.

Simultaneously, the information sought through this FOIA request will help TCA fulfill its well-established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which FOIA stands. Indeed, "FOIA is often explained as a means for citizens to know what 'their Government is up to.'" *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171 (2004) (quoting *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)). TCA will use and disseminate the information obtained through this FOIA request to inform its members and the general public about NOAA Fisheries' management and oversight of salmon and steelhead migration and loss in the Columbia River, thereby contributing to a better understanding for the public of how NOAA Fisheries incorporates information about conversion of salmon and steelhead into its decision-making processes and enforcement activities.

TCA is a public interest organization with over 700 members that works to protect and conserve wild steelhead and salmon and other wild anadromous fish species and the wild river environments upon which the fish depend. TCA also communicates with citizens and supporters through The Osprey, The Journal of the Steelhead Committee of the Federation of Flyfishers, with a circulation of over 2,500 individuals. Since 2003, TCA has been involved in scientific research and policymaking in the complex world of salmon and steelhead management. TCA has demonstrated its ability to take scientific and technical information provided by government agencies and distill it into a format that is accessible to the public and influence public policy, and disseminates information obtained under FOIA and its analyses of such information free of

charge to ensure maximum access by the general public. TCA employs, contracts and works with science and policy experts who have analyzed NEPA, ESA and other environmental and scientific reports for many years. TCA has worked with NOAA Fisheries regarding steelhead and salmon conservation on numerous occasions, and our experience and expertise is well-recognized.

TCA staff, Board and Science Advisers include acknowledged experts in the field of salmon and steelhead conservation and management. They include Conservation Director Bill Bakke, Bill McMillan, Jim Lichatowich, Dr. Rick Williams, and Dr. Jack Stanford. Their credentials are available on the TCA website at http://www.theconservationangler.com/who.html and http://www.theconservationangler.com/advisors.html, and copies of those are attached to this request. TCA Conservation Director Bakke in particular is well-known for synthesizing and disseminating information about the state of wild fish in the Columbia River Basin, for example by compiling and circulating a monthly "Conservation and Science Report." TCA also partners with other nonprofit conservation organizations whose staff include independent, credentialed scientists and retired fishery management staff with appropriate and current expertise that bear exactly on the issues and information being sought via this FOIA request.

TCA will communicate with a distinct segment of the public – anglers and conservationists – who have a keen interest in the health and abundance and availability to angle for the salmon and steelhead migrating up the Columbia and Snake Rivers and tributaries in three states. The extremely low forecast of certain EA-listed steelhead returning in 2017 to these rivers will and has prompted possible closures and other angling restrictions. *See* Al Thomas, "Washington to negotiate on Columbia salmon reforms," *The Columbian* (Mar. 24, 2017), *available at* http://www.columbian.com/news/2017/mar/24/washington-to-negotiate-on-columbia-salmon-reforms/) (reporting that "Forecasts call for . . . a mere 1,100 wild Group B steelhead in 2017. Group B steelhead are larger, later-returning fish headed for Idaho's Snake River. TCA submitted its original FOIA request soon after becoming aware of this forecast. Because the low-forecast wild Group B steelhead are expected to arrive in the Columbia River within the next month or so, time is of the essence in receiving the requested information.

The public is clamoring for answers to the question "How did we get here?" TCA's investigation of known causes of the low adult returns, review of the relevant data produced through this FOIA request, and its analysis and subsequent dissemination information about those causes will be critical the specifically interested angling public, and generally to the wide number of Pacific Northwest citizens who value just knowing that wild salmon and steelhead return to our rivers.

There is a need for public disclosure about the causes of an emergency situation regarding the management and allocation of ESA-listed steelhead and salmon that is not being fulfilled by the responsible agencies.

1. TCA has the expertise to understand the information being requested.
2. Other organizations rely on TCA for its expertise on fishery management based on the expertise of our staff and advisers.

3. The public is keenly interested in the conservation-oriented management of wild salmonids in the Columbia and Snake River Basin and its tributaries.
4. The public does not have the complete range of information available to it in order to participate effectively during its opportunity to participate in the public process afforded to them under state and federal laws govering the management of ESA-listed salmonids.
5. TCA has the means to understand, synthesize, and disseminate the information and any analysis to a wide range of specifically and generally interested members of the public. This includes the TCA website and multiple social media platforms managed by TCA, as well with all of the same mediums of those non-profit conservation and angling organizations with which we are working in a coordinated fashion. TCA expects to publicize the requested information widely, including through write-ups on its website and press releases to interested local and national media outlets, because the information will be timely for the public in understanding how NOAA oversees the harvest of fish in the Columbia and Snake Rivers.

Federal courts have found that dissemination to 2,500 people through a newsletter and the intent to start a website is sufficient to meet the "reasonably broad audience" factor. *Forest Guardians v. U.S. Dep't of Interior*, 416 F.3d 1173, 1180 (10th Cir. 2005). Moreover, they have found that the proven ability to digest and disseminate highly technical information, as demonstrated by past analysis and dissemination, merits giving nonprofit organizations fee waivers. *See W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1040 (D. Idaho 2004). TCA's activity in these respects reasonably outstrips any minimums established by judicial interpretation.

C. The information requested is likely to contribute significantly to the public's understanding of Government operations or activities (15 C.F.R. § 4.11(*l*)(2)(iv))

As noted above, information regarding NOAA's studies of conversion rates of migrating adult salmon or steelhead is essentially absent from publicly available websites or other publicly available sources, and NOAA Fisheries' communications about conversion rates with other stakeholders or co-managers of anadromous fish in the Columbia River is opaque and inaccessible to the public. Accordingly, the public has almost no knowledge either of the data on fish conversion that NOAA Fisheries is collecting and analyzing, nor of how NOAA Fisheries uses such data to inform decision-making regarding appropriate levels of harvest in the Columbia River or how it exercises its power and responsibility for enforcing limitations on take of ESA-listed species and otherwise managing anadromous fish under the ESA to ensure their survival and recovery.

The very act of a local citizen group engaging in the review of agency records created or obtained during implementation of federal statutes is "in the public interest." The *per se* significance of the "citizen watchdog" function carried out by Native Fish Society is evident from federal law interpreting the FOIA. The fee waiver provision was adopted to facilitate access to agency records by what the Court described as "citizen watchdog" organizations. *See Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir.1987).

Here, significance flows also from timely public production of the requested agency records as the accepted means for the public to determine whether or not NOAA Fisheries has complied with its obligations in informing the management of fisheries in the Columbia River. These records, which will be shared with the general public and used to inform TCA's advocacy of better protection of wild fish and better oversight by NOAA Fisheries, will allow the public to better understand and comment on how NOAA Fisheries evaluates the conversion of migrating adult fish in the Columbia River and what actions it takes to ensure that such conversion does not harm the species. TCA's contribution to the public understanding of this issue based on review and synthesis of agency records has been, and will continue to be, significant.

II. Obtaining the information is of no commercial interest to The Conservation Angler. (15 C.F.R. § 4.11(*l*)(3))

As noted, TCA is a 501(c)(3) nonprofit environmental and conservation advocacy organization that works to protect and conserve wild steelhead and salmon and the wild river environments these species depend upon. TCA works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. In contrast, pursuant to FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest, as those terms are commonly understood. *See, e.g.*, The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10012, 10017–18 (Mar. 27, 1987). Such interests are not present in this request. Specifically, in no manner does TCA seek information from NOAA Fisheries for commercial gain or interest. To the contrary, TCA respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of unregulated and illegal commercial and recreational harvest of ESA-listed steelhead and salmon and those effects on the recovery of these listed species in the Columbia and Snake Rivers in particular. TCA will analyze and provide members of the public with relevant information obtained from NOAA Fisheries without charge, and as part of its organizational mission and activities.

Based upon meeting the foregoing specific criteria, TCA requests that this FOIA be classified within NOAA Fisheries' fee waiver category and that NOAA Fisheries send the requested information as required by law.

REPLYING TO THIS REQUEST

As this is a matter of extreme importance to TCA, we look forward to your reply within twenty working days, as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). Please acknowledge receipt of this request, and provide a tracking number, as soon as possible, and please provide an estimated completion date for processing the request as FOIA requires. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the exempted document and the particular legal basis upon which the exemption is claimed, and please release all reasonably segregable portions that are not themselves exempt. *Id.* § 552(b). Further, even where a document potentially falls under an exemption, FOIA is not a mandatory bar to disclosure, *Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979), but instead reflects a congressional preference for disclosure, so please use your discretionary release powers. If any

part of a document is redacted, please indicate the location of that redaction through use of black ink.

TCA recognizes that it may appeal, both administratively, 5 U.S.C. § 552(a)(6), and judicially, *id.* § 552(a)(4)(B), an agency's choice to withhold or redact information. Should the need arise, TCA is fully prepared to appeal any withholding or redaction, and to seek reasonable attorney fees and other litigation costs. *Id.* § 552(a)(4)(B), (E).

Please send all materials to the following TCA office: The Conservation Angler, 3241 NE 73rd Avenue, Portland, OR 97213, or via e-mail to theconservationangler@gmail.com. Electronic documents are preferred when available. Please do not wait to assemble all documents that are responsive to our request before releasing information, but instead release them on a rolling basis. If the responsive records are voluminous, please contact me to discuss the proper scope of the response. Finally, please do not hesitate to e-mail or call me if you have questions about this request.

Thank you for your attention. Your consideration of our request is greatly appreciated and important to the achievement of our mission and to yours.

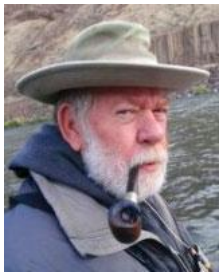
Sincerely,

David A. Moskowitz
Executive Director
theconservationangler@gmail.com
971-235-8953

TCA Scientific Advisors

TCA Board

Bill M. Bakke



Bill Bakke has spent his life advocating for wild fish. He grew up fishing rivers and streams throughout Oregon and Washington. As an observant soul, he took notice of profound differences between hatchery-raised salmon, trout and steelhead and their native counterparts in the wild rivers and streams of his youth.

As Bill began seeing the effects of poor harvest and hatchery management, he was among the first conservation-oriented anglers to search the scientific literature behind those early observations, and advocate for changed practices before anyone who would listen. Bill continues that work to this day, more than 50 years after he began it.

Among his accomplishments and highlights, Bill worked for agencies such as the Columbia River Fisheries Council and the Columbia River Inter-Tribal Fish Commission, founded several environmental groups aimed at native fish conservation, including Oregon Trout, the FishCons Coalition and the Native Fish Society. Bill has written over 100 articles on fish conservation for sporting, scientific and news journals and has been featured in books about salmon conservation including, A Common Fate by Joseph Cone, Song For The Blue Ocean by Carl Safina, and A River Lost by Blaine Harden. He has also appeared on national and international media including NOVA, NBC and the BBC. Bill established Oregon's first wild fish management policy and led petitions to list Snake River Chinook, Oregon Coastal coho and Columbia River coho under the Federal Endangered Species Act. Native Fish Society and its founder Bill Bakke were awarded the Carl R. Sullivan Fishery Conservation Award by the American Fisheries Society (AFS) in recognition of their pioneering work in the recovery and conservation of wild, native fish across the Pacific Northwest.

During his career, Bill Bakke has received the following recognition and awards:

- California Trout, Inc. The prestigious Roderick Haig-Brown Conservation Award, 1979
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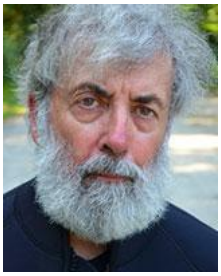

Bill McMillan is a writer, conservationist and citizen scientist. Bill helped found the Wild Fish Conservancy in 1989 and served as its Board Chair for ten years. Prior to that he explored rivers throughout Oregon and Washington, pioneering snorkling investigations where his observations and findings supported his exhaustive historical research efforts into the region's salmon and steelhead legacy. Bill's passionate angling and fly tying expertise was captured in the seminal 1988 book "Dry Line Fishing for Steelhead and Other Subjects" and again in "May the Rivers Never Sleep", written with his son John McMillan, a prominent steelhead biologist, in 2012.

Jack Stanford

Rick Williams

TCA Scientific Advisors

TCA Board

Bill M. Bakke

Kirill V. Kuzishchin

Jim Lichatowich

Jim Lichatowich is the author of two books. His latest book is Salmon People and Place: A Biologist's Search for Salmon Recovery, and he also wrote Salmon without Rivers: A History of the Pacific Salmon Crisis. Jim has worked on Pacific salmon issues as a researcher, manager, and scientific advisor for more than 40 years. He specializes in the history of salmon management and the life history and status of salmon and steelhead populations and the development of restoration plans in the Pacific Northwest. Jim was formerly the Chief of Fisheries Research and Assistant Chief of Fisheries for the State of Oregon. He served ten years on the Independent Scientific Advisory Board (ISAB) for the Columbia River salmon restoration program. He served four years on the State of Oregon's Independent Multidisciplinary Science Team (IMST). He has also served on four independent scientific review panels for the California Bay-Delta Authority.

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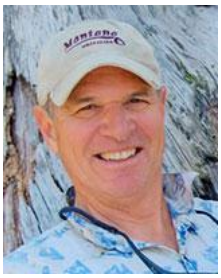

Following doctoral studies at the University of Utah and the Flathead Lake Biological Station (FLBS) of the University of Montana, Jack Stanford spent 5 years on the biology faculty at University of North Texas. In 1980 he became Director and Professor at FLBS, where he served for the next 36 years. Working with his 28 MS and 19 PhD students and many colleagues, Prof. Stanford produced some 230 professional papers and books on river ecology. Jack and his colleagues successfully secured over $60 million in extramural research grants that helped grow the FLBS into a world-class field research and education facility. He is most noted for his long-term studies in the Flathead River-Lake Ecosystem in Montana, and in British Columbia that elaborated the 4-dimensional nature of rivers, ecological connectivity of aquatic systems, and food web cascades caused by introduction of nonnative species. In 1999 Dr. Stanford began extensive work on a suite of salmon rivers in Kamchatka, Argentina, Washington, Oregon, Alaska, and British Columbia; the research focused on cross-site comparisons of the salmonid life histories and productivity and role of salmon-derived nutrient subsidies on floodplain ecology. Professor Stanford has served on many national and international science review panels. He was elected a Fellow of the American Association for Advancement of Science in 2000. In 2004 Professor Stanford received the Award of Excellence of the Society for Freshwater Science and in 2011 he received the Lifetime Achievement Award from the International Society for River Science. Stanford is Emeritus Professor of Ecology at FLBS. Jack and his wife Bonnie live by the Twisp River the Washington Cascades.

Rick Williams

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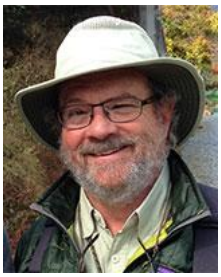

Dr. Rick Williams is a Research Associate in the Department of Biology at The College of Idaho and lives in Eagle, Idaho. His research and writing has focused on the conservation of native trout and salmon in western North America for more than 30 years. Rick has worked on Columbia River salmon recovery issues since 1986 and in 2006 authored Return to the River: Restoring Salmon to the Columbia River. Rick serves as a Senior Conservation Adviser for the International Federation of Fly Fishers. Rick is also an Outfitter, Guide, and Co-Owner of Idaho Angler, a specialty fly fishing store in Boise, Idaho.

TCA Scientific Advisors

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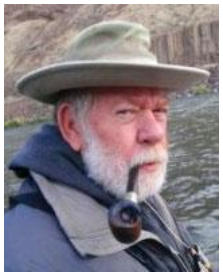
Bill M. Bakke



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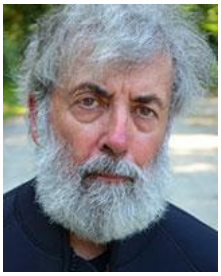

Bill McMillan is a writer, conservationist and citizen scientist. Bill helped found the Wild Fish Conservancy in 1989 and served as its Board Chair for ten years. Prior to that he explored rivers throughout Oregon and Washington, pioneering snorkling investigations where his observations and findings supported his exhaustive historical research efforts into the region's salmon and steelhead legacy. Bill's passionate angling and fly tying expertise was captured in the seminal 1988 book "Dry Line Fishing for Steelhead and Other Subjects" and again in "May the Rivers Never Sleep", written with his son John McMillan, a prominent steelhead biologist, in 2012.

Jack Stanford

Rick Williams

TCA Scientific Advisors

TCA Board

Bill M. Bakke

Kirill V. Kuzishchin

Jim Lichatowich

Jim Lichatowich is the author of two books. His latest book is Salmon People and Place: A Biologist's Search for Salmon Recovery, and he also wrote Salmon without Rivers: A History of the Pacific Salmon Crisis. Jim has worked on Pacific salmon issues as a researcher, manager, and scientific advisor for more than 40 years. He specializes in the history of salmon management and the life history and status of salmon and steelhead populations and the development of restoration plans in the Pacific Northwest. Jim was formerly the Chief of Fisheries Research and Assistant Chief of Fisheries for the State of Oregon. He served ten years on the Independent Scientific Advisory Board (ISAB) for the Columbia River salmon restoration program. He served four years on the State of Oregon's Independent Multidisciplinary Science Team (IMST). He has also served on four independent scientific review panels for the California Bay-Delta Authority.

Bill McMillan

Jack Stanford

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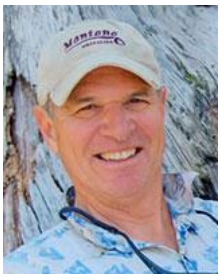

Following doctoral studies at the University of Utah and the Flathead Lake Biological Station (FLBS) of the University of Montana, Jack Stanford spent 5 years on the biology faculty at University of North Texas. In 1980 he became Director and Professor at FLBS, where he served for the next 36 years. Working with his 28 MS and 19 PhD students and many colleagues, Prof. Stanford produced some 230 professional papers and books on river ecology. Jack and his colleagues successfully secured over $60 million in extramural research grants that helped grow the FLBS into a world-class field research and education facility. He is most noted for his long-term studies in the Flathead River-Lake Ecosystem in Montana, and in British Columbia that elaborated the 4-dimensional nature of rivers, ecological connectivity of aquatic systems, and food web cascades caused by introduction of nonnative species. In 1999 Dr. Stanford began extensive work on a suite of salmon rivers in Kamchatka, Argentina, Washington, Oregon, Alaska, and British Columbia; the research focused on cross-site comparisons of the salmonid life histories and productivity and role of salmon-derived nutrient subsidies on floodplain ecology. Professor Stanford has served on many national and international science review panels. He was elected a Fellow of the American Association for Advancement of Science in 2000. In 2004 Professor Stanford received the Award of Excellence of the Society for Freshwater Science and in 2011 he received the Lifetime Achievement Award from the International Society for River Science. Stanford is Emeritus Professor of Ecology at FLBS. Jack and his wife Bonnie live by the Twisp River the Washington Cascades.

Rick Williams

TCA Scientific Advisors

TCA Board

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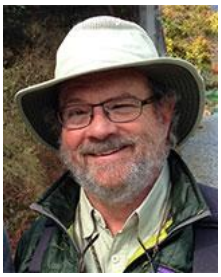

Dr. Rick Williams is a Research Associate in the Department of Biology at The College of Idaho and lives in Eagle, Idaho. His research and writing has focused on the conservation of native trout and salmon in western North America for more than 30 years. Rick has worked on Columbia River salmon recovery issues since 1986 and in 2006 authored Return to the River: Restoring Salmon to the Columbia River. Rick serves as a Senior Conservation Adviser for the International Federation of Fly Fishers. Rick is also an Outfitter, Guide, and Co-Owner of Idaho Angler, a specialty fly fishing store in Boise, Idaho.

From: Mail Delivery Subsystem <mailer-daemon@googlemail.com>
Sent: Wednesday, May 24, 2017 12:01 PM
To: mark.graff@noaa.gov
Subject: Delivery Status Notification (Delay)
Attachments: details.txt; Re: FOIA Assignment for DOC-NOAA-2017-001200

Delivery incomplete

There was a temporary problem delivering your message to **foia@erulemaking.net**. Gmail will retry for 22 more hours. You'll be notified if the delivery fails permanently.

LEARN MORE

The response was:

```
The recipient server did not accept our requests to connect. Learn more at
https://support.google.com/mail/answer/7720 [erulemaking.net 69.64.146.224: timed out]
```

Reporting-MTA: dns; googlemail.com
Arrival-Date: Mon, 22 May 2017 07:15:44 -0700 (PDT)
X-Original-Message-ID:
<CAFHw6A8LmnWgYui64byxALHUqE7AkQukLnpB2CKX+BwEmze1kQ@mail.gmail.com>

Final-Recipient: rfc822; foia@erulemaking.net
Action: delayed
Status: 4.4.1
Diagnostic-Code: smtp; The recipient server did not accept our requests to connect. Learn more at
https://support.google.com/mail/answer/7720
[erulemaking.net 69.64.146.224: timed out]
Last-Attempt-Date: Wed, 24 May 2017 09:01:22 -0700 (PDT)
Will-Retry-Until: Thu, 25 May 2017 07:15:44 -0700 (PDT)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Mon, 22 May 2017 10:15:03 -0400
Subject: Re: FOIA Assignment for DOC-NOAA-2017-001200
To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Cc: foia@erulemaking.net, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Looking at the request (b)(5) [redacted]?

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [redacted] (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 Fri, May 19, 2017 at 2:52 PM, Arlyn Penaranda - NOAA Federal <
arlyn.penaranda@noaa.gov> wrote:

(b)(5) [redacted]?
>
>
>
> *From:* foia@regulations.gov [mailto:foia@regulations.gov]
> *Sent:* Friday, May 19, 2017 9:20 AM
> *To:* arlyn.penaranda@noaa.gov
> *Subject:* FOIA Assignment for DOC-NOAA-2017-001200
>
>
>
> You have been assigned to the FOIA request DOC-NOAA-2017-001200.
> Additional details for this request are as follows:
>
> - Assigned By: Samuel B. Dixon
> - Request Tracking Number: DOC-NOAA-2017-001200
> - Due Date: 06/16/2017
> - Requester: Meera Gajjar
> - Request Track: Simple
> - Short Description: N/A
> - Long Description: Please see attachment for full response Under the
> Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of
> information as detailed below on behalf of the National Whistleblower
> Center (NWC), a nonprofit organization focused on advocating for
> whistleblowers. 1. I am requesting any and all documents regarding the
> Lacey Act Reward Fund and/ or the Lacey Act Reward Account (hereinafter
> referred to as the “Lacey Act Reward Fund” or “Fund”). In particular, I am

> requesting: a. Any and all documents regarding the Fund's creation
> (including but not limited to the specific information that established the
> Fund as a lawful entity within the Department of Commerce and/ or the
> National Marine Fisheries Service. b. The Fund's annual budget (including
> all income, all expenses, and all payments for FY2012, FY2013, FY2014,
> FY2015, and FY2016). We request that all incoming funds and rewards paid,
> if applicable, be identified for each enforcement action. c. Any rules/
> regulations/ guidance documents regarding the administration of the Fund.
> d. A Copy of any internal report within the Department of Commerce that
> discusses the Fund. 2. I am also requesting any and all documents regarding
> NOAA's Asset Forfeiture Fund (hereinafter referred to as "AFF"). In
> particular, I am requesting: a. Any and all documents regarding the Fund's
> creation (including but not limited to the specific information that
> established the Fund as a lawful entity within the Department of Commerce
> and/ or the National Marine Fisheries Service. b. The Fund's annual budget
> (including all income, all expenses, and all payments for FY2012, FY2013,
> FY2014, FY2015, and FY2016). We request that all incoming funds and rewards
> paid, if applicable, be identified for each enforcement action. c. Any
> rules/ regulations/ guidance documents regarding the administration of the
> Fund. d. A Copy of any internal report within the Department of Commerce
> that
----- Message truncated -----

From: Kelton, Cindy (Federal) <ckelton@doc.gov>
Sent: Wednesday, May 24, 2017 12:20 PM
To: z1mian@hotmail.com
Cc: Graff, Mark (Federal)
Subject: FOIA Appeal DOC-OS-2017-001029 - Final Disposition
Attachments: DOC-NOAA-2017-000335 Final Disposition.pdf

Ms. Mian,

Please find attached final disposition for FOIA appeal #DOC-NOAA-2017-000335.

Thanks,

Cindy Kelton
Administrative Assistant
Department of Commerce
Office of General Counsel
ELI/InfoLaw
202-482-8103

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

From: foia@regulations.gov [mailto:foia@regulations.gov]
Sent: Friday, April 14, 2017 1:00 AM
To: Appeals, FOIA <foiaappeals@doc.gov>; Kelton, Cindy (Federal) <ckelton@doc.gov>; Bogomolny, Michael (Federal) <MBogomolny@doc.gov>
Subject: FOIA Appeal DOC-OS-2017-001029 Submitted

This message is to notify you of a new appeal submission to the FOIAonline application. Appeal information is as follows:

- Appeal Tracking Number: DOC-OS-2017-001029
- Request Tracking Number: DOC-NOAA-2017-000335
- Requester Name: Zeenat Mian
- Date Submitted: 04/14/2017
- Appeal Status: Submitted
- Description: - Agency is asserting these privileges without providing a listing of the specific documents withheld: author, recipient, subject matter, explanation why the document is privileged, status and harm. Without clarity on what is not being disclosed it is not possible to discern whether non disclosed documents contain underlying facts that are not advice and opinions.

- The agency has not specified/clarified agents or employees of the organisation who are authorised to act or speak for the organisation in relation to the subject matter of the communication.

- The release of these documents will show and prove the reasons, rationale and decision making process are in fact ultimately the grounds for the agency's actions.

- The agency has not demonstrated that disclosure of such information would actually inhibit candor in the decision-making process.

- Agency has not demonstrated the material withheld involves "confidential communications between an attorney and its clients " and relates to a legal matter for which the client has sought professional advice.

- Withholding these documents hinders government accountability and transparency. It does not compromise the integrity and functioning of the government or cause injury to the quality of agency decisions.

- The agency has not proven the non disclosed documents have been prepared by attorneys in anticipation of litigation rather than in the ordinary cause of business or would have been created in essentially similar form irrespective of a possible litigation.

MAY 24 2017

UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, DC 20230

Via FOIAOnline

Zeenat Mian
6750 Hawaii Kai Dr. #301
Honolulu, HI 96825

Re: FOIA Appeal # DOC-OS-2017-001029 (Request # DOC-NOAA-2017-000335)

Dear Ms. Mian,

This responds to your administrative appeal under the Freedom of Information Act (FOIA) (5 U.S.C. § 552) which you submitted on April 14, 2017. In your appeal, you contend: (1) NOAA's response failed to identify the bases for its exemptions; (2) the exemptions were improperly taken; and (3) NOAA "failed to provide a list of the specific documents withheld: author, recipient, subject matter, explanation why the document is privileged, status and harm." As discussed below, your appeal is denied.

FOIA exemption 5

FOIA Exemption 5 exempts from disclosure inter- or intra-agency documents which would not be available by law to a party in litigation with the agency. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1974). The records at issue here were shared among NOAA officials and with Department of Commerce officials and are clearly inter- or intra-agency documents. The documents at issue here meet the exemption's threshold requirement that they be "inter or intra-agency" records.

Deliberative Process Privilege

The deliberative process privilege protects the agency's decision-making process and avoids any chilling or distorting of the agency's deliberations in order to ensure that the decision-makers receive complete information and frank advice on which to base their opinions. *See Sears*, 421 U.S. at 151. In order to qualify for protection under the privilege, information must be both predecisional and deliberative. *See Federal Open Market Comm. v. Merrill*, 443 U.S. 340, 360 (1979). "Predecisional" documents may include "recommendations, draft documents, proposals, and other subjective documents which reflect the personal opinions of the author rather than the policy of the agency." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

A deliberative document reflects the "give and take" of the deliberative process and therefore contains opinions, recommendations, or advice about agency policies. *Hamilton Sec. Group, Inc. v. Dep't of Hous. and Urban Dev., Office of Inspector Gen.*, 106 F. Supp. 2d 23, 26 (2000). A document is part of the deliberative process when its "disclosure … would expose an agency's

decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine [its] ability to perform its functions." *Dudman Communications Corp. v. Dep't of the Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987).

Courts have routinely found that the privilege applies to the types of records withheld here. The leading case on the privilege provides that it applies to "advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated . . . ." *Sears*, 421 U.S. at 150. Specific types of documents that have been found to be exempt from disclosure as predecisional and deliberative include e-mails between agency employees as well as drafts and informal written analyses. *See Grand Central Partnership, Inc. v. Cuomo*, 166 F.3d 473, 483 (2d Cir. 1999) (where the e-mails reflected the employees' personal opinions as part of the agency's consultative process preceding related agency decisions); *see also Archer v. Cirrincione*, 722 F. Supp. 1118, 1123 (S.D.N.Y. 1989) (where the drafts reflect movement toward a final agency decision).

Four documents were withheld under FOIA exemption (b)(5) pursuant to the deliberative process. The deliberative process privilege permits the withholding of all materials that "reflect the agency's group thinking in the process of working out its policy and determining what its law shall be." *Sears,* 421 U.S. at 153. These four documents consist of emails and attachments exchanged between the Assistant Regional Administrator of the Protected Resources Division of NOAA's Fisheries' Pacific Islands Regional Office and the Chief, National Appeals Office, Office of Management and Budget of NOAA Fisheries, regarding developing a policy which addresses encounters between volunteers of the NOAA contracted agency HMMA and the public; the documents thus satisfy the requirement that the communication must be deliberative and pre-decisional. Disclosure of these records would chill agency deliberations in the future. These four documents were therefore properly withheld.

Attorney-Client Privilege

The attorney-client privilege protects "confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice." *Mead Data Cent., Inc. v. U.S. Dep't of the Air Force*, 556 F.2d 242, 252 (D.C. Cir. 1977). The Supreme Court has emphasized the public policy underlying this privilege: "sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client." *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). The privilege encompasses not only facts communicated by the client to the attorney, but also opinions rendered by the attorney based on those facts to the extent they reflect the client's original request for legal advice and client-provided factual information. *See Schlefer v. United States*, 702 F.2d 233, 244 n. 26 (D.C. Cir. 1983) (permitting the non-disclosure of attorney opinions and advice to protect the secrecy of underlying client-provided facts). Additionally, the privilege also applies in situations where there are multiple clients who share a common interest. *See Akin, Gump, Strauss, Hauer & Feld, LLP v. Dep't of Justice*, 530 F. Supp. 2d 373, 380 (D.D.C. 2007) (noting that attorney-client privilege is not waived when government shares documents with private party with whom it is jointly prosecuting a *qui tam* action).

Seventy documents were withheld pursuant to the attorney-client privilege. Sixty-seven of these documents consist of email correspondence and attachments shared among NOAA's Assistant Regional Administrator of the Protected Resources Division of the National Marine Fisheries Service, Pacific Islands Regional Office, NOAA; the Chief, Pacific Islands Section, NOAA Office of the General Counsel; and the Deputy Section Chief, Pacific Islands Section, NOAA Office of the General Counsel. Three of these documents include emails from the then-Acting Chief, General Litigation Division, Office of the Assistant General Counsel for Litigation, Employment and Oversight.

These documents reflect the underlying factual information which the client communicated to the attorney or contain legal advice provided by the attorney based on those facts. The communications therefore fall squarely into the category of attorney-client privileged documents. Were these documents to be released, NOAA staff might foreseeably forego seeking the advice of legal counsel, resulting in a chilling of conversations among attorneys and clients. Because the documents are privileged and there is foreseeable harm to releasing them, these seventy documents were properly withheld.

Vaughn index

Your contention that NOAA should have provided a listing of the specific documents withheld (e.g. a *Vaughn* index) is without foundation. The requirement of *Vaughn v. Rosen* that an agency should ordinarily provide an itemized index correlating each withheld document (or portion) with a specific exemption justification was fashioned only in connection with the adjudication of a defendant agency's motion for summary judgment in litigation. Agencies need not create a *Vaughn* index until ordered to do so by a court, after the FOIA plaintiff has exhausted all administrative remedies. *See Judicial Watch v. Clinton*, 880 F. Supp. 1, 19 (D.D.C. 1995). Moreover, there is no requirement that administrative responses to FOIA requests contain the same documentation necessary in litigation. *See Crooker v. Central Intelligence Agency,* No. 83-1426, slip op. at 3 (D.D.C. Sept. 28, 1984). Nor do the Department's FOIA regulations at 15 C.F.R. § 4.7 and § 4.10 require the Department to provide the requester with a *Vaughn* index at either the request or appeal stage. Instead, they require a brief explanation of the basis for the denial, including a list of the applicable FOIA exemptions. *Id.* Such an explanation was provided with the original response to your FOIA request.

Sincerely,

Brian D. DiGiacomo

Brian D. DiGiacomo
Assistant General Counsel
for Employment, Litigation, and Information

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 24, 2017 1:51 PM
To: Pua Kamaka - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Fwd: FOIA Appeal DOC-OS-2017-001029 - Final Disposition
Attachments: DOC-NOAA-2017-000335 Final Disposition.pdf

Hi Pua--

For your own records, attached is the adjudication of the appeal by Ms. Mian in -000335. All NOAA actions were affirmed on appeal.

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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---------- Forwarded message ----------
From: **Kelton, Cindy (Federal)** <ckelton@doc.gov>
Date: Wed, May 24, 2017 at 12:20 PM
Subject: FOIA Appeal DOC-OS-2017-001029 - Final Disposition
To: "z1mian@hotmail.com" <z1mian@hotmail.com>
Cc: "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>

Ms. Mian,

Please find attached final disposition for FOIA appeal #DOC-NOAA-2017-000335.

Thanks,

Cindy Kelton

Administrative Assistant

Department of Commerce

Office of General Counsel

ELI/InfoLaw

202-482-8103

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From: foia@regulations.gov [mailto:foia@regulations.gov]
Sent: Friday, April 14, 2017 1:00 AM
To: Appeals, FOIA <foiaappeals@doc.gov>; Kelton, Cindy (Federal) <ckelton@doc.gov>; Bogomolny, Michael (Federal) <MBogomolny@doc.gov>
Subject: FOIA Appeal DOC-OS-2017-001029 Submitted

This message is to notify you of a new appeal submission to the FOIAonline application. Appeal information is as follows:

- Appeal Tracking Number: DOC-OS-2017-001029
- Request Tracking Number: DOC-NOAA-2017-000335
- Requester Name: Zeenat Mian
- Date Submitted: 04/14/2017
- Appeal Status: Submitted
- Description: - Agency is asserting these privileges without providing a listing of the specific documents withheld: author, recipient, subject matter, explanation why the document is privileged, status and harm. Without clarity on what is not being disclosed it is not possible to discern whether non disclosed documents contain underlying facts that are not advice and opinions.

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- Withholding these documents hinders government accountability and transparency. It does not compromise the integrity and functioning of the government or cause injury to the quality of agency decisions.

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MAY 24 2017

UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, DC 20230

Via FOIAOnline

Zeenat Mian
6750 Hawaii Kai Dr. #301
Honolulu, HI 96825

Re: FOIA Appeal # DOC-OS-2017-001029 (Request # DOC-NOAA-2017-000335)

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Attorney-Client Privilege

The attorney-client privilege protects "confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice." *Mead Data Cent., Inc. v. U.S. Dep't of the Air Force*, 556 F.2d 242, 252 (D.C. Cir. 1977). The Supreme Court has emphasized the public policy underlying this privilege: "sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client." *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). The privilege encompasses not only facts communicated by the client to the attorney, but also opinions rendered by the attorney based on those facts to the extent they reflect the client's original request for legal advice and client-provided factual information. *See Schlefer v. United States*, 702 F.2d 233, 244 n. 26 (D.C. Cir. 1983) (permitting the non-disclosure of attorney opinions and advice to protect the secrecy of underlying client-provided facts). Additionally, the privilege also applies in situations where there are multiple clients who share a common interest. *See Akin, Gump, Strauss, Hauer & Feld, LLP v. Dep't of Justice*, 530 F. Supp. 2d 373, 380 (D.D.C. 2007) (noting that attorney-client privilege is not waived when government shares documents with private party with whom it is jointly prosecuting a *qui tam* action).

Seventy documents were withheld pursuant to the attorney-client privilege. Sixty-seven of these documents consist of email correspondence and attachments shared among NOAA's Assistant Regional Administrator of the Protected Resources Division of the National Marine Fisheries Service, Pacific Islands Regional Office, NOAA; the Chief, Pacific Islands Section, NOAA Office of the General Counsel; and the Deputy Section Chief, Pacific Islands Section, NOAA Office of the General Counsel. Three of these documents include emails from the then-Acting Chief, General Litigation Division, Office of the Assistant General Counsel for Litigation, Employment and Oversight.

These documents reflect the underlying factual information which the client communicated to the attorney or contain legal advice provided by the attorney based on those facts. The communications therefore fall squarely into the category of attorney-client privileged documents. Were these documents to be released, NOAA staff might foreseeably forego seeking the advice of legal counsel, resulting in a chilling of conversations among attorneys and clients. Because the documents are privileged and there is foreseeable harm to releasing them, these seventy documents were properly withheld.

Vaughn index

Your contention that NOAA should have provided a listing of the specific documents withheld (e.g. a *Vaughn* index) is without foundation. The requirement of *Vaughn v. Rosen* that an agency should ordinarily provide an itemized index correlating each withheld document (or portion) with a specific exemption justification was fashioned only in connection with the adjudication of a defendant agency's motion for summary judgment in litigation. Agencies need not create a *Vaughn* index until ordered to do so by a court, after the FOIA plaintiff has exhausted all administrative remedies. *See Judicial Watch v. Clinton*, 880 F. Supp. 1, 19 (D.D.C. 1995). Moreover, there is no requirement that administrative responses to FOIA requests contain the same documentation necessary in litigation. *See Crooker v. Central Intelligence Agency,* No. 83-1426, slip op. at 3 (D.D.C. Sept. 28, 1984). Nor do the Department's FOIA regulations at 15 C.F.R. § 4.7 and § 4.10 require the Department to provide the requester with a *Vaughn* index at either the request or appeal stage. Instead, they require a brief explanation of the basis for the denial, including a list of the applicable FOIA exemptions. *Id.* Such an explanation was provided with the original response to your FOIA request.

Sincerely,

Brian D. DiGiacomo

Brian D. DiGiacomo
Assistant General Counsel
for Employment, Litigation, and Information

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 24, 2017 3:58 PM
To: Glenn Tallia - NOAA Federal; Heather Book - NOAA Federal; Hillary Davidson; Kristen Gustafson - NOAA Federal; Matthew Womble - NOAA Affiliate; Rodney Vieira - NOAA Federal; Rose Stanley - NOAA Federal; Russell Vose - NOAA Federal; Ruth Ann Lowery - NOAA Federal; Tim Owen - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: Karl-related FOIA requests
Attachments: Karl-related requests extraction 5.24.xls

Good Afternoon,

Attached is the spreadsheet for today's call.

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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From: Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>
Sent: Wednesday, May 24, 2017 4:01 PM
To: Nathanson Stacey
Cc: Mark Graff - NOAA Federal
Subject: FW: Karl-related FOIA requests
Attachments: Karl-related requests extraction 5.24.xls

Ruth Ann Lowery, Attorney-Advisor
NOAA Office of General Counsel
Fisheries & Protected Resources Section
1315 East-West Highway, SSMC III, Room 15114
Silver Spring, MD 20910
(301)713-9671
Fax: (301) 713-0658

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Sent: Wednesday, May 24, 2017 3:58 PM
To: Glenn Tallia - NOAA Federal; Heather Book - NOAA Federal; Hillary Davidson; Kristen Gustafson - NOAA Federal; Matthew Womble - NOAA Affiliate; Rodney Vieira - NOAA Federal; Rose Stanley - NOAA Federal; Russell Vose - NOAA Federal; Ruth Ann Lowery - NOAA Federal; Tim Owen - NOAA Federal
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Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
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(b)(6) [redacted] (C)

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From: Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>
Sent: Wednesday, May 24, 2017 4:10 PM
To: Ruth Ann Lowery - NOAA Federal
Cc: Mark Graff - NOAA Federal
Subject: Re: FW: Karl-related FOIA requests
Attachments: Karl-related requests extraction 5.24.xls

Are you guys on the line for the call? Using the call in number for the calendar invite, but I'm on hold as it says the leader has not activated the call.

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 Wed, May 24, 2017 at 4:01 PM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

Ruth Ann Lowery, Attorney-Advisor

NOAA Office of General Counsel

Fisheries & Protected Resources Section

1315 East-West Highway, SSMC III, Room 15114

Silver Spring, MD 20910

(301)713-9671

Fax: (301) 713-0658

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From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Wednesday, May 24, 2017 3:58 PM
To: Glenn Tallia - NOAA Federal; Heather Book - NOAA Federal; Hillary Davidson; Kristen Gustafson - NOAA Federal; Matthew Womble - NOAA Affiliate; Rodney Vieira - NOAA Federal; Rose Stanley - NOAA Federal; Russell Vose - NOAA Federal; Ruth Ann Lowery - NOAA Federal; Tim Owen - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: Karl-related FOIA requests

Good Afternoon,

Attached is the spreadsheet for today's call.

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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From: Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>
Sent: Wednesday, May 24, 2017 4:15 PM
To: Mark Graff - NOAA Federal
Subject: Re: DOC-NOAA-2017-001007
Attachments: ocean foia 2017-1092 FOIA_HMS logbook data_4-26-2017-2 (1).pdf

(b)(5) [redacted] Attaching the FOIA request for your ease of use. Let me know what works best for you. 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 Wed, May 24, 2017 at 4:05 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Got it--maybe we can touch base tomorrow? I've got a pretty open schedule and could have a call whenever it works on your end. (b)(5) [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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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 Wed, May 24, 2017 at 4:02 PM, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov> wrote:

(b)(5) [redacted].

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 Wed, May 24, 2017 at 3:56 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Stacey--

I just wanted to ping you real quick on this an (b)(5) [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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April 26, 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):

Earthjustice, on behalf of Oceana, submits this request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Documents Requested

The Highly Migratory Species Division of NMFS manages the dusky shark fishery under the Highly Migratory Species Fishery Management Plan (HMS FMP). NMFS published a final rule for Amendment 5b to the HMS FMP on April 4, 2017 and a related final environmental impact statement (EIS) under the National Environmental Policy Act in February 2017, which evaluated alternatives for dusky shark management and selected preferred alternatives for Amendment 5b. The Highly Migratory Species Division of NMFS collects self-reported logbook data on both the pelagic longline fishery and the shark bottom longline fishery and utilizes that data to monitor bycatch in both fisheries, including the bycatch of dusky sharks.

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:

1. **The data sources used to estimate shark bycatch in the HMS pelagic longline and shark bottom longline fisheries.**

2. **Logbook data related to shark bycatch, by species, in the HMS shark bottom longline and pelagic longline fisheries.**

3. **Observer data and reports related to shark bycatch, by species, in the HMS shark bottom longline and pelagic longline fisheries.**

4. **The total number of permitted vessels in the Gulf of Mexico reef fish fishery and Southeastern Atlantic snapper-grouper fishery.**

5. **The number of vessels that have both a directed shark permit and a directed reef fish or directed snapper-grouper permit in the Gulf of Mexico and Southeastern Atlantic.**

6. **The number of vessels that have both an incidental permit to land sharks and a directed reef fish permit or directed snapper-grouper permit in the Gulf of Mexico and Southeastern Atlantic.**

We request that any documents, records, and materials be produced in response to these requests in an aggregated format, to the extent providing individualized data on fishing boats or permits would implicate confidentiality concerns. In any case, we request that that documents, records, data, and materials, aggregated or otherwise, reflect species-specific information to the maximum extent it is available. This request does not include the observer reports from the shark bottom longline fishery observer program that are readily available on NMFS's website (*i.e.*, Characterization of the Shark Bottom Longline Fishery: 2015, NOAA Technical Memorandum NMFS-SEFSC-689).

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).

<u>Fee Waiver Requested</u>

We request a waiver of any fees associated with this request. 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 Oceana 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 dusky shark bycatch in the HMS fishery.

The EIS at issue here directly implicates the overfishing of dusky sharks in the HMS fishery and the steep declines of the dusky shark population over the last few decades, placing the species in an overfished state. This request will enable Oceana to evaluate the strength of, and basis for, the agency's analysis. Accordingly, the FOIA request directly implicates the operations and activities of the government in managing public resources in the HMS fishery.

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 dusky shark bycatch in the HMS fishery. The requested records relate to the government's evaluation of bycatch and management of the HMS fishery. Access to these records will allow Oceana to evaluate NMFS's dusky shark bycatch estimations for the HMS 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 dusky shark bycatch.

While observer reports from the shark bottom longline fishery observer program are available to the public, observer reports from the pelagic longline fishery and logbook data from both fisheries, as requested by Oceana, are not. The requested documents are necessary for the public to gain a complete understanding of the government's estimations of dusky shark bycatch in HMS fisheries. This information is critical to assessing the government's actions in protecting dusky sharks. Accordingly, disclosure of the requested information will contribute significantly to public understanding of the government's operations and activities with respect to the HMS fisheries.

Oceana 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. Oceana's experts will scrutinize the scientific underpinnings of the requested documents; these analyses will form the basis for responding to NMFS's proposed Amendment 5b and related EIS, as well as 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).

Oceana 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").

Oceana 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. Oceana 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 public resources in the Southeastern Atlantic Ocean and Gulf of Mexico.

Oceana staff and board include resource analysts, scientists (including a marine scientist focused on sharks), lawyers, and professionals who specialize in public outreach. They

use that expertise to analyze and evaluate information about government decisions affecting public resources, such as the management of dusky shark bycatch, and provide analyses and evaluations to members, other organizations, and the general public.

Oceana 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. Oceana has gained a detailed understanding of the issues surrounding the problem of dusky shark bycatch.

NMFS appointed marine scientists from Oceana to serve on the HMS FMP Advisory Panel for numerous years, including most recently from 2009 through 2011 and from 2014 to present. Oceana's efforts concerning dusky sharks include numerous public comments regarding the species to NMFS. Oceana has been involved in public awareness events concerning dusky sharks and alerts its membership on issues involving the protection of dusky sharks.

In addition, Oceana has a dedicated campaign to reduce bycatch throughout the United States and published numerous reports describing the problem of bycatch in various fisheries throughout the United States, including in the Gulf of Mexico and Southeastern Atlantic Ocean, as well as reports describing the valuable species affected by bycatch in these fisheries, including sharks and turtles. For example, in June 2014, Oceana published a report entitled, "Wasted Cash: The price of Waste in the U.S. Fishing Industry," which reported on the value of discarded fish caught as bycatch in the U.S. fishing industry.[1] Likewise, in March of 2014, Oceana published a report entitled, "Wasted Catch: Unsolved Problems in U.S. Fisheries, which reported on comprehensive national bycatch estimates nation-wide.[2] In addition, Oceana has engaged in a public awareness campaign to inform U.S. citizens of the need for NMFS to take measures that will reduce dusky shark bycatch and ensure this depleted shark species recovers from its overfished status and 65 percent population decline.[3]

Moreover, Oceana staff and members have participated extensively in the relevant public processes over the last decade, by, among other things, submitting comments to NMFS concerning the management of the dusky shark fishery and the protection of dusky sharks in the marine ecosystem through the reduction of bycatch; commenting

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[1] Amanda Keledjian et al., Wasted Catch: The Price of Waste in the U.S. Fishing Industry (June 2014), http://usa.oceana.org/sites/default/files/reports/wasted_cash_report_final.pdf.
[2] Amanda Keledjian et al., Wasted Catch: Unsolved Problems in U.S. Fisheries (Mar. 2014), http://usa.oceana.org/sites/default/files/reports/Bycatch_Report_FINAL.pdf.
[3] Oceana, *Dusky Sharks*, http://usa.oceana.org/our-work/promote-responsible-fishing/bycatch/dusky-sharks (last visited April 17, 2017).

on the protection of endangered and threatened species; and engaging in the more general public discourse over the HMS fisheries and associated marine life in various public and scientific symposia.[4]

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. Oceana 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 requested documents will undergo significant scientific and legal scrutiny by Oceana and these analyses will form the foundation for responding to NMFS's actions to address dusky shark bycatch. The records will further both the organization's and members' understanding of dusky shark bycatch in HMS fisheries.

Issues involving dusky shark bycatch in the HMS fishery are of significant public interest and have been the subject of significant public discourse as well as NMFS and fishery management council processes.

The requested disclosure will significantly increase public understanding of NMFS's operations and activities pertaining to dusky sharks. Oceana's headquarters is located in Washington, D.C., and Oceana has additional offices in key U.S. coastal areas. Oceana's website and publications educate its over 700,000 members and supporters and the public regarding shark bycatch. Oceana obtains broad media coverage. For example, in 2016, over 12,000 media stories about Oceana or citing Oceana were published or broadcast in the United States.

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.

Oceana, and other members of the public have participated actively in efforts to address and reduce dusky shark bycatch. Oceana will use information gained through this

[4] *See, e.g.,* Oceana Comments on Listing Oceanic Whitetip Shark as Threatened Under the ESA (Mar. 29, 2017); Oceana Comments on Proposed Amendment 5b and DEIS (Dec. 22, 2016); Oceana Comments on Draft Addendum IV to the Coastal Sharks Interstate Fishery Management Plan (July 11, 2016).

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 NMFS management decisions to address dusky shark bycatch.

4. Oceana Has No Commercial Interest in the Disclosure of the Information.

Oceana is a § 501(c)(3) tax-exempt nonprofit international advocacy organization dedicated to mitigating environmental threats to the oceans, including threats that affect marine wildlife, such as sharks. Oceana's Responsible Fishing Campaign includes the goal of seeking protections for sharks, as many shark populations worldwide have faced severe population declines in recent years due to overfishing, either through directed fisheries, bycatch, or the demand for fins.[5] 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. Oceana 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).

Oceana functions as a member of the news media because it regularly gathers, publishes, and disseminates information to the public. Oceana gathers, synthesizes, and

[5] Worm, B., B. Davis, L. Kettemer, C.A. Ward-Paige, D. Chapman, M.R. Heithaus, S.T. Kessel, and S.H. Gruber. 2013. Global catches, exploitation rates, and rebuilding options for sharks. Marine Policy 40:194–204; Stevens, J. D., T.I. Walker, S.F. Cook, and S.V. Fordham. 2005. Threats faced by chondrichthyan fish. Page 461, in S.L. Fowler, R.D. Cavanagh, M. Camhi, G.H. Burgess, G.M. Cailliet, S.V Fordham, C.A. Simpfendorfer, and J.A. Musick, editors. Sharks, rays and chimaeras: the status of chondrichthyan fishes. IUCN/SSG Shark Specialist Group, Gland, Switzerland; Clarke, S. 2007. Social, economic, and regulatory drivers of the shark fin trade. Marine Resource Economics, 22:305–327.

publishes information and news concerning marine conservation and bycatch which it broadly disseminates to its membership and the press through its website and blog, press releases, quarterly print magazine, and monthly email newsletter which it distributes to its over 700,000 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)(A), we look forward to a reply within twenty (20) 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 (415) 217-2142. Thank you in advance for your assistance.

Sincerely,

s/ Brettny Hardy
Attorney
EARTHJUSTICE
500 California St., Suite 500
San Francisco, CA 94111
bhardy@earthjustice.org

From: Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>
Sent: Thursday, May 25, 2017 9:34 AM
To: Mark Graff - NOAA Federal
Cc: Ruth Ann Lowery
Subject: Re: FOIA Litigation in the news

Attaching the complaint. Here is the description of the request taken directly from that complaint:

"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."

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 Thu, May 25, 2017 at 9:30 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

> I hadn't seen this--and it doesn't look like I have access to the EE News article without a subscription. What's the subject matter so I can look it up in FOIAOnline?
>
> 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 Thu, May 25, 2017 at 9:23 AM, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov> wrote:

> Have you guys seen this? Apparently, CBD filed FOIA lawsuits against EPA, State, Energy, and Interior Tuesday. The linked article indicates that CBD has filed identical requests with us.

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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---------- Forwarded message ----------
From: **Katherine Renshaw - NOAA Federal** <katherine.renshaw@noaa.gov>
Date: Thu, May 25, 2017 at 8:38 AM
Subject: FOIA Litigation in the news
To: Stacey Nathanson <stacey.nathanson@noaa.gov>

If you hadn't seen this:

https://www.eenews.net/eenewspm/2017/05/23/stories/1060054997

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Katherine Renshaw
Section Chief
Environmental Review and Coordination Section
NOAA Office of General Counsel

U.S. Department of Commerce
301-713-7380
http://www.nepa.noaa.gov/

document_pm_...

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;

and

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

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Case No.: 1:17-cv-0974

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, and U.S. Department of State to provide records concerning the Trump

administration's censorship of these federal departments' and their component agencies' discussion or dissemination 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 four 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).

STATUTORY BACKGROUND

16. 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).

17. 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).

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

19. 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).

20. 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).

21. 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.*

22. 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).

23. 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.

24. 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.

25. 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).

26. 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)

27. 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."

28. The same day, the Interior Department acknowledged the Center's request and assigned it tracking number OS-2017-00384 ("Interior Department FOIA Request").

29. 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.

30. As of the date of the filing of this complaint, which is 18 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)

31. 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."

32. 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.

33. 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.

34. 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.

35. As of the date of the filing of this complaint, which is 18 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)

36. 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."

37. 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").

38. 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.

39. 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.

40. 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.

41. 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."

42. 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.

43. 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."

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

State Department FOIA Request

45. 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."

46. 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").

47. 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.

48. 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.

49. As of the date of the filing of this complaint, which is 15 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.

All Requests

50. 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).

51. 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

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

53. 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.

54. 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).

55. 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.

56. 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.

57. 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

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

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

60. 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).

61. 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.

62. 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

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

64. 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.

65. 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).

66. 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.

67. 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

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

69. 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.

70. 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).

71. 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.

72. 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.

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

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

74. 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).

75. 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.

76. 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.

77. 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.

78. 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

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

80. 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).

81. 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.

82. 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.

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

84. 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

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

86. 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).

87. 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.

88. 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.

89. 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.

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 Has Unlawfully Withheld Records Responsive to The 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 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).

93. 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.

94. 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.

95. 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.

96. 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.

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

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

98. 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.

99. 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.

100. 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.

101. 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

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

103. 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.

104. 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.

105. 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.

106. 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

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

108. 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.

109. 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.

110. 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.

111. 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

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

113. 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.

114. 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.

115. 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.

116. 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.

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

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

118. 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).

119. 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.

120. 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.

121. 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.

122. 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

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

124. 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).

125. 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.

126. 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.

127. 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.

128. 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

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

130. 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).

131. 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.

132. 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.

133. 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.

134. 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

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

136. 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).

137. 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 EPA-HQ-2017-005517.

138. 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.

139. 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.

140. 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.

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

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

142. 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).

143. 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 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 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).

144. 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.

145. 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.

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

147. 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

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

149. 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).

150. 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).

151. 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.

152. 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.

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

154. 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

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

156. 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).

157. 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).

158. 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.

159. 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.

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

161. 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

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

163. 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).

164. 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).

165. 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.

166. 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.

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

168. 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

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

170. The Interior Department violated FOIA's statutory mandates due to its failure and refusal because it failed 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).

171. 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.

172. 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.

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

174. 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

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

176. EPA violated FOIA's statutory mandates due to its failure and refusal because it failed 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).

177. 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.

178. 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.

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

180. 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

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

182. The Energy Department violated FOIA's statutory mandates due to its failure and refusal because it failed 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).

183. 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.

184. 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.

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

186. 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

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

188. The State Department violated FOIA's statutory mandates due to its failure and refusal because it failed 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).

189. 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.

190. 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 State Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

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

192. 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, and F-2017-08517, 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: May 23, 2017

Respectfully submitted,

/s/ Amy R. Atwood

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

From: Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>
Sent: Thursday, May 25, 2017 9:36 AM
To: Mark Graff - NOAA Federal; Stacey Nathanson - NOAA Federal
Subject: RE: FOIA Litigation in the news

Here's the text of the article:

CLIMATE

Greens sue 4 agencies over 'censorship'

Hannah Hess, E&E News reporter

Published: Tuesday, May 23, 2017

An environmental watchdog sued four federal agencies today for alleged "censorship" of climate change.

The Center for Biological Diversity filed suit under the Freedom of Information Act, challenging U.S. EPA and the departments of Energy, the Interior and State over withholding records it requested after the agencies removed information from their websites about climate change.

CBD filed separate FOIA requests with each agency between March 30 and April 3, requesting directives, instructions or communications, including with the Trump administration transition team, that instructed 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."

According to the **complaint** filed in U.S. District Court for the District of Columbia, the agencies have not provided any records in response to the requests or asked for additional time to comply.
"The Trump administration's refusal to release public information about its climate censorship continues a dangerous and illegal pattern of anti-science denial," said CBD's Taylor McKinnon. "Just as censorship won't change climate science, foot-dragging and cover-ups won't be tolerated under the public records law."

The group has filed identical FOIA requests with the Council on Environmental Quality, the Department of Agriculture, the Department of Health and Human Services, and the National Oceanic and Atmospheric Administration.

CBD also teamed up with the Center for Media and Democracy and scientist Stuart Pimm to file similar FOIA requests for climate change information from multiple agencies (***Greenwire***
, May 8).

Ruth Ann Lowery, Attorney-Advisor
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From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Thursday, May 25, 2017 9:30 AM
To: Stacey Nathanson - NOAA Federal
Cc: Ruth Ann Lowery
Subject: Re: FOIA Litigation in the news

I hadn't seen this--and it doesn't look like I have access to the EE News article without a subscription. What's the subject matter so I can look it up in FOIAOnline?

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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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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Date: Thu, May 25, 2017 at 8:38 AM
Subject: FOIA Litigation in the news
To: Stacey Nathanson <stacey.nathanson@noaa.gov>

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Katherine Renshaw
Section Chief
Environmental Review and Coordination Section
NOAA Office of General Counsel
U.S. Department of Commerce
301-713-7380
http://www.nepa.noaa.gov/

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, May 25, 2017 9:55 AM
To: Ruth Ann Lowery - NOAA Federal
Cc: Stacey Nathanson - NOAA Federal
Subject: Re: FOIA Litigation in the news

(b)(5) [redacted].

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
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Greens sue 4 agencies over 'censorship'

Hannah Hess, E&E News reporter

Published: Tuesday, May 23, 2017

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According to the **complaint** filed in U.S. District Court for the District of Columbia, the agencies have not provided any records in response to the requests or asked for additional time to comply.

"The Trump administration's refusal to release public information about its climate censorship continues a dangerous and illegal pattern of anti-science denial," said CBD's Taylor McKinnon. "Just as censorship won't change climate science, foot-dragging and cover-ups won't be tolerated under the public records law."

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CBD also teamed up with the Center for Media and Democracy and scientist Stuart Pimm to file similar FOIA requests for climate change information from multiple agencies (***Greenwire***

, May 8).

Ruth Ann Lowery, Attorney-Advisor

NOAA Office of General Counsel

Fisheries & Protected Resources Section

1315 East-West Highway, SSMC III, Room 15114

Silver Spring, MD 20910

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Katherine Renshaw
Section Chief

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From: Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>
Sent: Thursday, May 25, 2017 10:28 AM
To: Mark Graff - NOAA Federal
Cc: Stacey Nathanson - NOAA Federal
Subject: RE: FOIA Litigation in the news

Thanks, Mark!

Ruth Ann Lowery, Attorney-Advisor
NOAA Office of General Counsel
Fisheries & Protected Resources Section
1315 East-West Highway, SSMC III, Room 15114
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U.S. Department of Commerce

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http://www.nepa.noaa.gov/

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, May 25, 2017 1:23 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); Pamela Lawrence - NOAA Federal; John Almeida - NOAA Federal
Subject: Weekly FOIA Incoming and High Visibility Requests
Attachments: Weekly FOIA Incoming and High Visibility Requests 05.17.17 - 05.24.17.xls; Judicial Watch DDC complaint.pdf; OCE v. NMFS Court Order re Fees.pdf; PEER v. NOAA.pdf

Good Afternoon,

Attached is the weekly report.

Notably, BuzzFeed News has requested all documents previously released to Judicial Watch in the Judicial Watch v. DOC lawsuit in DDC, 15-cv-2088. (Original Complaint Attached). (DOC-NOAA-2017-001247). In addition, BuzzFeed submitted an administrative appeal of the interim response in DOC-NOAA-2017-000613 (DOC-OS-2017-1269).

Separately, Cause of Action has requested all FOIA processing, taskers, communications, and FOIA request case-file notes related to the processing of their existing FOIA requests that pertain to the NE Seamounts National Monuments. (DOC-NOAA-2017-001275).

In litigation, PEER submitted their request for attorneys fees resulting from their litigation in PEER v. NOAA. (b)(5) [redacted]).

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC., 425 Third Street SW, Suite 800 Washington, DC 20024, Plaintiff, v. UNITED STATES DEPARTMENT OF COMMERCE, 1401 Constitution Avenue, NW Washington, DC 20230, Defendant.	)))))))))))))))	Civil Action No.

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 S.W., Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, integrity, and accountability 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 United States Department of Commerce is an agency of the United States Government and is headquartered at 1401 Constitution Avenue, NW, Washington, D.C. 20230. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On October 30, 2015, Plaintiff submitted a FOIA request to the National Oceanographic and Atmospheric Administration, a component of Defendant, seeking access to:

> 1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
> 2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
> 3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.
> 4. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to a subpoena issued for the aforementioned information by Congressman Lamar smith on October 13, 2015.
>
> The time frame for the requested records is October 30, 2014 through October 30, 2015.

6. Plaintiff sent its request via U.S. Postal Service ("USPS") Certified Mail, Receipt No. 70150640000798544253. USPS provided Plaintiff a Domestic Return Receipt signed showing that Defendant received the request by certified mail on November 3, 2015.

7. Defendant has failed to acknowledge Plaintiff's request and has provided no information concerning the status of the request.

8. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to determine whether to comply with Plaintiff's request within twenty (20) working days after receipt of the request and to notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination. Accordingly, Defendant's determination was due by November 23, 2015.

9. As of the date of this Complaint, Defendant has failed to: (i) determine whether to comply with Plaintiff's request; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

10. Because Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its request, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA, 5 U.S.C. § 552)

11. Plaintiff realleges paragraphs 1 through 10 as if fully stated herein.

12. Additionally, Defendant is violating FOIA by failing to search for and produce all records responsive to Plaintiff's request that are not lawfully exempt from production.

13. Plaintiff is being irreparably harmed by reason of Defendant's violations of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply fully with FOIA.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to search for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably calculated to uncover all records responsive to the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive 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: December 2, 2015

Respectfully submitted,

/s/ Lauren M. Burke

Lauren M. Burke
D.C. Bar No. 1028811
JUDICIAL WATCH, INC.
425 Third Street SW, Suite 800
Washington, DC 20024
(202) 646-5172

Counsel for Plaintiff

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OUR CHILDREN'S EARTH FOUNDATION, et al.,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES SERVICE, et al.,

Defendants.

Case No. 14-cv-01130-WHO

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR ATTORNEY'S FEES

Re: Dkt. No. 82

Plaintiffs seek an award of $723,202.74 in attorney's fees and $3,190.39 in costs for succeeding in part on their consolidated lawsuits filed under the Freedom of Information Act (FOIA) against the federal agency defendants. Dkt. 94. I conclude that plaintiffs are eligible and entitled to an award of attorney's fees, but at a significantly reduced amount in light of requested hourly rates that are not adequately supported and unnecessary or excessive time billed.

BACKGROUND

Plaintiffs Our Children's Earth Foundation and Ecological Rights Foundation are Bay Area non-profits dedicated to protecting the environment.[1] Plaintiffs sent a series of nine FOIA requests to National Marine Fisheries Service (NMFS) starting in May 2013. The requests concerned NMFS's oversight of activities by Stanford University and the impact of those activities on the Central California Coast steelhead. Plaintiffs were concerned with Stanford University's operation of Searsville Lake and Dam, which were built in 1892, and other related water diversions and infrastructure that Stanford uses to provide non-potable water for its campus. Plaintiffs believe that "Lake Water System" adversely affects the steelhead by reducing water

[1] *See* Declaration of Annaliese Beaman (Dkt. No. 83) ¶ 2. Plaintiffs are referred to collectively as OCE.

flows in San Francisquito Creek and its tributaries and cutting the steelhead off from access to upstream spawning habitat. *See* Judge Conti's March 30, 2015 Order [Dkt. No. 59] at 3-4. Plaintiffs attempted to enjoin Stanford's activities in a separate lawsuit, *Our Children's Earth Foundation v. Stanford Univ.*, No. 13-cv-00402-JSW (N.D. Cal.).[2]

In response to what OCE contends were deficient responses to its first four FOIA requests, plaintiffs filed their first lawsuit (*OCE I*) in April 2014. In that lawsuit, OCE challenged whether NMFS's responses to plaintiffs' FOIA requests were adequate, whether NMFS had a pattern and practice of tardy and incomplete responses, and whether FWS failed to meet its internal deadline to respond to NMFS.[3] Plaintiffs filed their second lawsuit (*OCE II*) in September 2014, based on the tardy or otherwise deficient responses to their second set of FOIA Requests (FOIA requests 5 - 8). In *OCE II* plaintiffs alleged that NMFS failed to adequately respond to their additional FOIA requests, and reiterated their argument that NMFS had a pattern and practice of tardy and incomplete responses to FOIA requests.[4] The lawsuits were related by Judge Conti.[5]

In *OCE I*, the parties moved for summary judgment. Plaintiffs argued that: (1) NMFS failed to adequately describe its searches or conducted an inadequate search and withheld documents without sufficient justification; (ii) they were entitled to a declaratory judgment that NMFS violated FOIA's deadlines in responding to their four requests and in three related internal appeals, and FWS violated FOIA's deadlines in responding to a referral of documents from NMFS; and (iii) the alleged violations of the FOIA are a part of a pattern and practice of non-

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[2] The government contends that plaintiffs' first FOIA request was filed "as discovery" for the Stanford lawsuit. Oppo. 6.

[3] A second defendant in *OCE I*, Fisheries and Wildlife Service (FWS) was alleged to have failed to respond to NMFS's request that FWS review and release under the FOIA portions of FWS's documents that NMFS had it its possession.

[4] The Army Corps of Engineers (Corps) was also named as a defendant in *OCE II*, as having failed to appropriately respond to plaintiffs' FOIA requests.

[5] Plaintiffs filed a third lawsuit (*OCE III*) in June 2015, which was also related to 14-1130. In *OCE III*, plaintiffs asserted that NMFS had failed to provide a timely final decision in response to OCE's ninth FOIA request (from April 2015) regarding more "up-to-date information" on the same subject matter. Judge Conti, on plaintiffs' request and without opposition from NMFS, dismissed *OCE III* as "prudentially moot." October 2015 SJ Order at 17-18. Plaintiffs are not seeking fees or costs related to that lawsuit. Mot. 4, n.1.

compliance with the FOIA's mandates, so the Court should enjoin NMFS and order it to comply with its FOIA obligations. March 30, 2015 Order at 6-7. The government opposed those arguments.

In an Order dated March 30, 2015 [Dkt. No. 59, Case No. 14-1130], Judge Conti: (i) ruled that NMFS failed to conduct adequate searches in response to OCE's first and third FOIA requests;[6] (ii) held in abeyance the determination as to whether NMFS adequately invoked FOIA Exemption (b)(6) to withhold names and contact information from responsive documents pending further supplementation of the factual record by NMFS (concerning the privacy concerns that would be implicated by release of that information); (iii) affirmed in part the withholding of some attorney-client documents, but concluded that NMFS had not met its burden to explain why certain portions of documents did not contain segregable and releasable information or why one specific document was withheld as attorney-client privileged and, therefore, held in abeyance the determination as to NMFS's withholding of those documents was appropriate; and (iv) granted plaintiffs' request for a declaratory judgment that NMFS failed to comply with the statutorily mandated response and appeal deadlines with respect to the four FOIA requests at issue. *Id.* at 8-26.[7] Judge Conti denied plaintiffs' motion and granted defendants' motion regarding withholdings, redactions, and timeliness. *Id.* at 28.[8]

NMFS then provided additional information to the Court concerning its withholdings and redactions, and plaintiffs submitted responses regarding the same.[9] In an Order dated July 20,

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[6] Judge Conti granted plaintiffs' motion on the adequacy of the search as to the first and third FOIA requests, and granted defendants' motion as to the adequacy of the searches in response to the second and fourth requests. *Id.* at 12.

[7] Judge Conti, however, expressly did not reach the question of whether plaintiffs had proven that NMFS had a pattern and practice of untimely responses, because "[t]he pattern and practice and cutoff date allegations are repeated, with a fuller evidentiary record, in cross-motions for summary judgment pending in" *OCE II*, and the Judge intended to address them in a subsequent order. *Id.* at 22.

[8] Plaintiffs point out that in preparing its cross-motion for summary judgment in *OCE I*, NMFS uncovered two additional responsive documents and disclosed them in full. *See* Declaration of Gary Stern [Dkt. No. 41, 14-1130] ¶ 17.

[9] As part of its supplemental briefing, NMFS decided to release two previously withheld in full documents and to release three redacted documents that had previously been withheld in full. It

2015, Judge Conti addressed the issues remaining from *OCE I*, as well as the cross-motions filed in *OCE II*. Judge Conti characterized the remaining arguments made by plaintiffs as: (i) NMFS failed to adequately search for records responsive to two of its requests; (ii) NMFS improperly withheld or overly redacted responsive records under two FOIA exemptions; (iii) NMFS was defying Department of Commerce (of which NMFS is a part) regulations by cutting off their search for responsive records at the date the FOIA request is received rather than the date the search begins; and (iv) the request for a declaratory judgment that NMFS's and the Corps' responses to plaintiffs' requests were untimely, and grant declaratory and injunctive relief to remedy NMFS's alleged pattern and practice of FOIA violations. July 20, 2015 Order [Dkt. No. 70, Case No. 14-1130] at 3-4. NMFS and the Corps cross-moved for summary judgment, arguing that their responses were adequate and declaratory and injunctive relief were unwarranted. *Id.* at 4.[10]

As to the substance of the adequacy of NMFS's responses, Judge Conti found that: (i) NMFS had failed to provide sufficient information for the court to determine whether NMFS conducted an adequate search, ordered NMFS to supplement the factual record, and held in abeyance the issue of summary judgment on NMFS's search; (ii) NMFS had properly withheld draft biological opinions under FOIA Exemption (b)(5), but did not adequately justify its withholding or non-redaction of an email under (b)(5), and as such NMFS was required to supplement the factual record to justify its withholding and non-redaction, and the court held in abeyance summary judgment on the withholding of that document; and (iii) granted summary judgment to NMFS withholding under FOIA Exemption (b)(7) of names in a report. *Id.* 5-17.

As to the issue of untimely responses and pattern and practice of delay and improper cutoff dates, Judge Conti: (i) granted plaintiffs' request for declaratory relief that NMFS violated its statutory duties with respect to the timeliness of its responses and appeals, but declined to enter

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also stated it was conducting a supplemental search for documents responsive to OCE's first and third FOIA requests. Dkt. No. 60 at 4-5; *see also* Dkt. No. 59 at 19, 21.

[10] In its cross-motion pleadings in *OCE II*, NMFS decided "upon additional review" to release an additional eleven documents in part and one in full. Dkt. No. 19 (14-4365) ¶ 28; Dkt. No. 18-1 (14-4365) ¶ 5.

declaratory relief against the Corps; (ii) determined that further facts were needed to address plaintiffs' contention that NMFS was using an improper cutoff date when beginning its search for documents and ordered supplemental briefing; and (iii) ordered plaintiffs to submit supplemental briefing on the status of their pending FOIA requests as to the pattern and practice of delay claim. *Id.* at 17-25. Finally, as to plaintiffs' request for injunctive relief, the Judge ordered NMFS "to comply with FOIA and its deadlines, due to the Court's finding that the Fisheries Service has failed to do so previously and the potential that these offenses might continue. Yet the Court, having so ordered and having GRANTED declaratory relief, DENIES WITHOUT PREJUDICE further injunctive relief at this time," in part because of "the fact that Plaintiffs appear to be repeatedly making large requests in sufficiently rapid succession that the Fisheries Service is unable to complete its response to one request before receiving a second" and recognizing evidence of good faith and efforts on the part of NMFS to comply with its deadlines and significantly improve its future performance. *Id.* at 26-27. The Court held in abeyance the motions regarding NMFS's exemption claims, adequacy challenge, cutoff dates, and pattern and practice allegations pending the supplementation of the record. *Id.* at 29-30.[11]

Following that round of supplementation, in an October 21, 2015 Order, Judge Conti addressed the remaining issues and ruled that: (i) NMFS's declarants had addressed the concerns over the adequacy of the search and granted NMFS summary judgment on that issue; (ii) determined that one record had been appropriately withheld under (b)(5) based on a supplemental *Vaughn* index and granted NMFS summary judgment on its withholdings under (b)(5); (iii) found that NMFS cured its showing of non-segregability of withheld information based on its supplemental *Vaughn* index, except as to one document,[12] and granted NMFS summary judgment on segregability as to all documents except that one; and (iv) granted summary judgment to NMFS

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[11] As part of its supplemental briefing, NMFS decided to release a redacted document that had been withheld in full. Dkt. No. 27 (14-4365) at 2. NMFS also explained its search cut-off policy (which OCE contends was "new"), requiring that if one or more subject-matter expert are required to search for documents, the date each expert starts his/her search establishes the cut-off date. Dkt. No. 27-4 (14-4365), ¶18(b).

[12] The Court ordered NMFS to produce the document at issue, or explain further why it should be withheld. October 21 2015 Order at 15. NMFS decided to produce the document.

based on additional information as to the cutoff dates used for searches. October 21, 2015 Order [Dkt. No 72, 14-1130] at 4-17.

As to the pattern and practice of delay claim, Judge Conti reviewed the evidence and found that NMFS was curing its processing and response problems and backlog, and therefore denied injunctive relief. However, in light of the "unmistakable history" of untimeliness and delay, Judge Conti granted declaratory relief to plaintiffs, concluding that: "(1) that the Fisheries Service has previously been engaged in a pattern-and-practice of failure to meet FOIA deadlines; (2) that the Fisheries Service has previously provided responses that were frequently and unreasonably delayed; (3) that due to these delays the Fisheries Service effectively provided no ability to FOIA requestors to anticipate when data might be provided; and (4) that due to these delays information was often provided after a long enough period of time that the data could be out-of-date, effectively negating its value and effectuating a complete denial of information." *Id.* at 20-21. He also granted "limited" injunctive relief to plaintiffs, requiring NMFS to provide any outstanding production in response to certain of plaintiffs' requests within 30 days. *Id.* at 21. Any further injunctive relief was denied without prejudice, but he required NMFS to show cause as to how it was curing its prior violations and intended to continue its response-time improvements going forward. *Id.* at 22.

After the case was reassigned to me in November 2015, I addressed whether any issues remained to be decided following Judge Conti's October and November 2015 Orders as well as the supplemental briefing filed by the parties regarding NMFS's efforts to cure its past timeliness violations and ensure those would not occur in the future. In an order dated January 20, 2016, I determined that Judge Conti had resolved all pending issues, and concluded that the evidence regarding NMFS's substantial reduction of its FOIA-response backlog and the "technical, administrative, and staffing improvements" NMFS had implemented to ensure timely processing of FOIA requests on a forward-going basis meant that continuing injunctive relief was not warranted. January 20, 2016 Order [Dkt. No. 75]. A stipulated judgment was entered on February 16, 2016. Plaintiffs now seek over $700,000 in attorney's fees for the hours they spent litigating *OCE I* and *OCE II*, as well as costs. Defendants oppose plaintiffs' entitlement to any fees, and

challenge the reasonableness of the amount sought.

LEGAL STANDARD

FOIA authorizes courts to "assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed." 5 U.S.C. § 552(a)(4)(E). This provision "has as its fundamental purpose the facilitation of citizen access to the courts to vindicate the public's statutory rights," as the fees and costs of bringing suit could otherwise "present a virtually insurmountable barrier which [would] ba[r] the average person from forcing governmental compliance with the law." *Exner v. F.B.I.*, 443 F. Supp. 1349, 1352 (S.D. Cal. 1978).

A court may grant an award of attorney's fees under 5 U.S.C. § 552(a)(4)(E) where the plaintiff establishes that it is both eligible for and entitled to an award. *See Church of Scientology of California v. U.S. Postal Serv.*, 700 F.2d 486, 489 (9th Cir. 1983); *Rosenfeld v. U.S. Dep't of Justice*, 903 F. Supp. 2d 859, 865 (N.D. Cal. 2012). To be eligible for an award, the plaintiff must show that "(1) the filing of the action could reasonably have been regarded as *necessary* to obtain the information; and (2) the filing of the action had a *substantial causative* effect on the delivery of the information." *Church of Scientology*, 700 F.2d at 489 (emphasis in original).

If the court determines that the plaintiff is eligible for attorney's fees, the court may then, "in the exercise of its discretion, determine that [it] is *entitled* to an award of attorney's fees." *Id.* at 492 (emphasis in original). In making this determination, courts consider "(1) the benefit to the public, if any, deriving from the case; (2) the commercial benefit to the complainant; (3) the nature of the complainant's interest in the records sought; and (4) whether the government's withholding of the records sought had a reasonable basis in law." *Id.*; *accord Long v. U.S. I.R.S.*, 932 F.2d 1309, 1313 (9th Cir. 1991). "These four criteria are not exhaustive, however, and the court may take into consideration whatever factors it deems relevant in determining whether an award of attorney's fees is appropriate." *Long*, 932 F.2d at 1313 (internal quotation marks omitted). Once eligibility is established, "[t]he decision to award attorney's fees is left to the sound discretion of the trial court." *Church of Scientology*, 700 F.2d at 492.

DISCUSSION

I. WHETHER PLAINTIFFS SUBSTANTIALLY PREVAILED AND ARE ELIGIBLE FOR ATTORNEY'S FEES

The government does not contest that plaintiffs substantially prevailed in *OCE I*, but argues that plaintiffs were not successful in *OCE II*, and therefore are not eligible for fees for that portion of the litigation. As noted above, in his July and October 2015 orders, Judge Conti addressed the claims asserted in *OCE II* (as well as issues asserted in *OCE I*). In the July Order, Judge Conti granted plaintiffs' request for a declaratory judgment that NMFS's responses to plaintiffs' FOIA requests 5-8 were untimely. July 2015 Order at 20-21. That by itself constitutes "success," albeit on a discrete issue. *See Hajro v. United States Citizenship & Immigration Servs.*, 900 F. Supp. 2d 1034, 1045 (N.D. Cal. 2012) (prevailing on summary judgment and obtaining injunctive relief on claim that defendant's responses were untimely constitutes substantial success), *reversed on other grounds by* 811 F.3d 1086, 1092 (9th Cir. 2016); *Or. Nat. Desert Ass'n v. Gutierrez*, 442 F. Supp. 2d 1096, 1098 (D. Or. 2006) (determination that agency failed to provide a timely response sufficient to create entitlement to fees), *aff'd in pertinent part, rev'd in part on other grounds by Or. Nat. Desert Ass'n v. Locke*, 572 F.3d 610 (9th Cir. 2009).

After initially finding that NMFS provided insufficient information in its declarations and *Vaughn* index to demonstrate the adequacy of some of its searches and withholdings, when NMFS provided supplemental briefing and declarations Judge Conti concluded that the searches were adequate and the withholdings justified (except as to one document under Exemption (b)(5), which NMFS decided to release). In addition, after receiving plaintiffs' summary judgment motion and while preparing its cross-motion pleadings in *OCE II*, NMFS decided "upon additional review" to release an additional eleven documents in part and one in full. Dkt. No. 19 (14-4365) ¶ 28; Dkt. No. 18-1 (14-4365) ¶ 5. Following the next round of supplemental briefing, NMFS decided to release in part yet another document that had been withheld. Dkt. No. 27 (14-4365) at 2. The evidentiary record supports plaintiffs' contention that these documents were produced as a result of *OCE II*.[13] Plaintiffs, therefore, prevailed, on another discrete portion of their litigation in

[13] NMFS argues that its responses to Requests 5 through 8 were not produced as a result of the

securing these supplemental productions under a catalyst theory. *See, e.g., Dorsen v. United States SEC*, 15 F. Supp. 3d 112, 120 (D.D.C. 2014) (plaintiff prevailed where FOIA suit prompted additional or speedier release of documents); *Judicial Watch, Inc. v. United States DOJ*, 878 F. Supp. 2d 225, 232 (D.D.C. 2012) (catalyst theory satisfied where after a final agency response and commencement of lawsuit, additional documents were produced).

More importantly, in light of the "unmistakable history" of "unreasonable" untimeliness and delay, Judge Conti granted plaintiffs' request for a declaratory judgment that NMFS failed to provide them with timely responses and had a past pattern and practice of untimely responses. That judgment, along with the limited injunctive relief (requiring NMFS to respond to plaintiffs' then-pending FOIA requests by a date certain), confers prevailing party status on plaintiffs as well. The government – in an attempt to avoid fees for *OCE II* – argues that plaintiffs did not secure any relief in *OCE II* beyond what they would have been entitled to given the claims asserted in *OCE I*. Oppo. 7-8. However, Judge Conti specifically held the pattern and practice claim in abeyance in *OCE I* to determine it on the more complete evidentiary record presented in *OCE II*. *OCE II*, therefore, was a necessary part to the Court's eventual determination.

Similarly, the fact that further, more wide-spread injunctive relief was not granted in response to the allegations raised in both *OCE I* and *OCE II* in the October 2015 or January 2016 Orders was due to the strong showing NMFS made on the steps the agency had taken and was continuing to take to extinguish its backlog and implement policies and practices to ensure timely responses in the future. The government spends much time in its brief and declarations attempting to show that the new policies and practices NMFS implemented in order to reduce the backlog discussed by Judge Conti and myself in the October 2015 and January 2016 Orders were not conceived in order to respond to, or spurred on by, plaintiffs' litigation but were underway prior to the filing of *OCE I* and *OCE II*. *See, e.g.*, Oppo. 9-10. Plaintiffs counter that argument by citing to notes and other documents produced by NMFS staff showing that efforts to reduce the backlog

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litigation, and cites testimony showing that NMFS began work processing and responding to these requests before the *OCE II* complaint was filed. *See* Hornof Decl. ¶ 7. NMFS also argues that the three FOIA requests subject to Judge Conti's limited order of injunctive relief, were also being processed and responses "underway" before the October 21, 2015 Order. *Id.* ¶¶ 10-11.

were just being formulated in June 2015 and were implemented in part to avoid litigation, like the suits at issue which were the only ones pending at the relevant time. *See, e.g.*, Reply 3-4.

However, in order to determine that plaintiffs are eligible for an award of attorney's fees, I need not resolve this factual dispute. That plaintiffs secured additional documents from NMFS after *OCE II* was filed and after NMFS took a closer look at its searches and withholdings and, more importantly, secured another declaratory judgment recognizing that the agency failed to provide timely responses, had engaged in a pattern and practice of tardy responses, and secured limited injunctive relief as to then-pending but not sued upon FOIA requests, is success significant enough to establish plaintiffs' eligibility for fees.[14]

In sum, plaintiffs were the prevailing parties on significant portions of both *OCE I* and *OCE II* and are eligible for an award of attorney's fees and costs.[15] The next step is to determine if they are entitled to them.

II. WHETHER PLAINTIFFS ARE ENTITLED TO ATTORNEY'S FEES

The factors courts consider in determining whether a plaintiff is entitled to attorney's fees include "(1) the benefit to the public, if any, deriving from the case; (2) the commercial benefit to the complainant; (3) the nature of the complainant's interest in the records sought; and (4) whether the government's withholding of the records sought had a reasonable basis in law." *Church of*

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[14] That said, the evidence on the whole indicates that NMFS took more concrete, specific, and immediate steps following Judge Conti's Orders to extinguish its backlog and commit additional resources to speeding up its response times than the agency might have taken but-for plaintiffs' suits.

[15] Plaintiffs repeatedly imply that they were successful on their improper cut-off date challenges, arguing that their lawsuits were the catalyst for NMFS's new cut-off date policy. Mot. at 8, 10. The improper cut-off date issue was raised but not decided by Judge Conti in his March 30 Order, because the issue was also raised but supported by a fuller factual record in the *OCE II* summary judgment briefing that was pending. In his July Order, Judge Conti determined that, at most, a factual dispute existed, and again held the issue in abeyance for supplemental responses. In his October Order, Judge Conti found that plaintiffs had not established that NMFS used improper cut-off dates, and instead granted summary judgment to NMFS on plaintiffs' improper search cut-off date claim as to plaintiffs' *own* FOIA requests. October Order at 17. Later in the October Order, Judge Conti recognized that the "NMFS West Coast Region appears to have an updated process in place, using modern software, additional personnel, and policy changes (e.g., how the cut-off date changes where there are multiple SMEs assigned) to speed up its process. See Supp. Malabanan Decl. ¶¶ 15-18." *Id.* at 18. Judge Conti, however, never reached the issue of whether these lawsuits were the catalyst for NMFS's new, updated, or clarified policy with respect to search cut-off dates.

Scientology, 700 F.2d at 489. I will discuss each in turn.

A. Benefit to the Public

In considering the public benefit factor, courts consider "the degree of dissemination and the likely public impact that might result from disclosure." *Church of Scientology*, 700 F.2d at 493. The factor generally weighs in favor of an award where the information is broadly disseminated to the public. *See, e.g., Electronic Frontier Foundation v. Office of Dir. of Nat. Intelligence*, No. 07-cv-05278-SI, 2008 WL 2331959, at *3 (N.D. Cal. June 4, 2008) (finding that the public benefit factor was satisfied where the plaintiff "immediately posted the requested information on its website" and "created press releases for public access"). Even where the degree of dissemination is limited, or where the level of public interest in the requested information itself is minimal, the public benefit factor may still favor an award "as long as there is a public benefit from the fact of . . . disclosure." *O'Neill, Lysaght & Sun v. D.E.A.*, 951 F. Supp. 1413, 1423 (C.D. Cal. 1996).

Courts in this circuit have found a public benefit favoring an award, despite an absence of broad dissemination or a significant level of public interest in the requested information, where (1) the case "establishe[d] that the government may not withhold certain information pursuant to a particular FOIA exemption," *Church of Scientology*, 700 F.2d at 493; (2) the plaintiffs were environmental nonprofits whose purpose was "to oversee and enforce compliance with the [Clean Air Act]" and the requested information was "being used to inform [the plaintiffs'] ongoing oversight and enforcement efforts," *The Sierra Club v. United States Envtl. Prot. Agency*, 75 F. Supp. 3d 1125, 1143-44 (N.D. Cal. 2014); and (3) the requested documents revealed a "long history of abuse" by a paid DEA informant and "expos[ed] the implications of the government dealing with untrustworthy paid informants." *O'Neill*, 951 F. Supp. at 1423-24.

Plaintiffs argue that – just like the plaintiffs in *Sierra Club* – they "utilized the documents to advance their efforts to promote compliance with environmental laws intended to broadly benefit the public interest environmental protection. Specifically, they utilized the documents to organize public support for measures designed to persuade Stanford and NMFS to do more to protect a threatened fish species and to develop ESA citizen suits claims aiming to help the

survival and recovery of this threatened species." Beaman Decl. ¶¶ 6-8; Mot. 15. Plaintiffs also disseminated the information they secured to their members, the press, and the public through messages, website postings, press releases, and interviews. Beaman Decl. ¶¶ 6-8.

As NMFS points out, it is unclear what role in that public outreach (if any) the information actually secured by OCE as a direct result of the filing of these lawsuits or Judge Conti's Orders played. Beaman's declaration is not specific on that point. *See, e.g., Cotton v. Heyman*, 63 F.3d 1115, 1120 (when evaluating the public benefit prong, the court must "evaluate the specific documents at issue in the case at hand"). NMFS does not argue (or show by declaration) that the information produced to OCE after the inception of the suits or Judge Conti's Orders issued was so ministerial or obscure that it could not have supported plaintiffs' public interest and public disclosure goals. The Beaman declaration, while not specifically focused on documents produced as a result of this litigation, persuasively explains how the documents OCE received through its FOIA requests and its litigation play a significant role in OCE's mission to inform the public about the activities of Stanford and the Central California Coast steelhead. Dkt. Nos. 83, 96.

In addition, this lawsuit effectively and publicly disclosed NMFS's history of untimely responses and significant backlog – as well as the steps NMFS was undertaking to cure those issues. That shed important light about the agency's non-compliance with its duty under FOIA, a situation Judge Conti repeatedly referred to as "clear, undisputed, and troubling." March 30, 2015 Order at 24; *see also* July 20, 2015 Order at 19 ("In short, even though the Fisheries Service does not take the FOIA's deadlines seriously, '[t]here can be no doubt that Congress [did]'"). Finally, plaintiffs secured a significant, contested legal ruling from Judge Conti: that FOIA allows both declaratory judgment and injunctive relief as remedies for untimely responses. NMFS vigorously argued that the only available remedy for a violation under FOIA was an order requiring production of withheld documents; a position that was soundly rejected by Judge Conti. March 30, 2015 Order at 24-26; July 20, 2015 Order at 19-21.

On this record, plaintiffs have shown that this litigation – through the information released and the legal principles established – conferred a significant benefit on the public.

B. Commercial Benefit to the Complainant/Nature of Plaintiffs' Interests

The second and third factors are "the commercial benefit to the complainant" and "the nature of the complainant's interest in the records sought." *Church of Scientology*, 700 F.2d at 492. Courts regularly consider these factors together. *See, e.g., id.* at 494; *Am. Small Bus. League v. U.S. Small Bus. Admin.*, No. 08-cv-00829-MHP, 2009 WL 1011632, at *3 (N.D. Cal. Apr. 15, 2009); *Electronic Frontier Foundation*, 2008 WL 2331959, at *3.

As a general matter, if a "commercial benefit will inure to the plaintiff from the information," or if the plaintiff "intends to protect a private interest" through the FOIA litigation, then "an award of attorney's fees is not recoverable." *Church of Scientology*, 700 F.2d at 494. On the other hand, where the plaintiff "is indigent or a nonprofit public interest group, an award of attorney's fees furthers the FOIA policy of expanding access to government information." *Id.* The Ninth Circuit has instructed that, pursuant to the second and third factors, a court "should generally award fees if the complainant's interest in the information sought was scholarly or journalistic or public-oriented," but should not do so "if his interest was of a frivolous or purely commercial nature." *Long*, 932 F.2d at 1316.

Plaintiffs argue that their non-profit status combined with the lack of any private commercial interest in the information they secured, strongly favors an award under these factors. *See* Beaman Decl. ¶¶ 1, 6-8. The government counters that contrary to plaintiffs' current assertion that their goal in *OCE I* and *OCE II* was to force NMFS to provide more timely and fulsome responses to their and others' FOIA requests, the real purpose of these lawsuits was to force NMFS to produce documents that plaintiffs could and did use in their suit against Stanford University. Declaration of Robin M. Wall [Dkt. No. 92-1], Ex. L ("Stanford Summary Judgment Papers," noting that some of the FOIA production was used on a motion to compel and on a motion for summary judgment in the Stanford case). That purpose, according to the government, is a private one that does not make plaintiffs entitled to fees. Oppo. 11-13.

The cases relied on by NMFS considered private litigants who used FOIA to secure evidence in support of their private lawsuits. *See Hersh & Hersh v. U.S. Dept. of Health and Human Services*, No. 06-04234-PJH, 2008 U.S. Dist. LEXIS 110977, at *7 (N.D. Cal. July 9,

2008) (denying an award of attorney's fees where "plaintiff undertook this FOIA request for decidedly commercial purposes" when plaintiff was litigating private lawsuit against a defendant regarding defective medical devices and plaintiff failed to secure disclosure of the "vast majority" of documents it sought); *Ellis v. United States*, 941 F. Supp. 1068, 1078 (D. Utah 1996) (denying fees where documents sought for assistance in private tort suit, because while documents produced under FOIA created "some slight public benefit in bringing the government into compliance with FOIA and providing information of general interest to the public, the disclosure of the records did not add to the fund of information necessary to make important political choices").[16] They do not address the situation here, where non-profit environmental advocacy organizations bring suit under FOIA as part of their ongoing efforts to shed light on how an agency is (or is not) protecting the environment, albeit with respect to a specific project.

Moreover, while plaintiffs were undoubtedly motivated in some part to secure documents from NMFS in order to assist their litigation against Stanford, there was a significant and separate public benefit sought and secured by plaintiffs – shedding light on the actions of NMFS (as opposed to the actions of Stanford) in carrying out its agency duties and on its handling of plaintiffs' and others' FOIA requests.[17]

These factors weigh in favor of plaintiffs' entitlement to fees.

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[16] I recognize that the court in *Sierra Club v. United States EPA*, 75 F. Supp. 3d 1125, 1144 (N.D. Cal. 2014) rejected an agency's argument that a non-profit environmental group plaintiff had a commercial interest in the FOIA litigation because they intended to bring environmental litigation, in part because "Plaintiffs were not pursuing a separate private lawsuit against Luminant at the time they initiated the FOIA request." The court, therefore, did not directly reach the issue raised here.

[17] NMFS's other cases are inapposite, as they do not address whether use of documents secured through FOIA in other litigation equals a "commercial" interest in the FOIA litigation, but stand for the proposition that having a personal interest in the records sought does not increase the access to those records under FOIA. *See, e.g.*, *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 143 n.10 (1975) ("Sears' rights under the Act are neither increased nor decreased by reason of the fact that it claims an interest in the Advice and Appeals Memoranda greater than that shared by the average member of the public. The Act is fundamentally designed to inform the public about agency action and not to benefit private litigants."); *Shannahan v. IRS*, 672 F.3d 1142, 1151 (9th Cir. 2012) (requestors' interest in IRS documents about themselves to use in their civil tax suit does not negate applicability of FOIA exemptions preventing disclosure).

C. Reasonable Basis in Law

The fourth factor is "whether the government's withholding had a reasonable basis in law"; in other words, whether the government's actions appeared to have "a colorable basis in law" or instead appeared to be carried out "merely to avoid embarrassment or to frustrate the requester." *Church of Scientology*, 700 F.2d at 492, 492 n.6; *see also Rosenfeld*, 903 F. Supp. 2d at 870; *Am. Small Bus. League*, 2009 WL 1011632, at *4. This factor "is not dispositive" and can be outweighed where the other relevant factors favor an award. *Rosenfeld*, 903 F. Supp. 2d at 870 (internal quotation marks omitted); *see also O'Neill*, 951 F. Supp. at 1425 (noting that the reasonable basis in law factor "in particular should not be considered dispositive"). The burden is on the government to demonstrate that its withholding was reasonable. *Sierra Club*, 75 F. Supp. 3d at 1145.

Here, Judge Conti repeatedly found in no uncertain terms that NMFS failed to provide timely responses under FOIA. *See, e.g.*, March 30, 2015 Order at 24 (with respect to NMFS's violation of FOIA deadlines "the record is clear, undisputed, and troubling …. In short, even though the Fisheries Service does not take the FOIA's deadlines seriously, '[t]here can be no doubt that Congress [did].'"); July 20, 2015 Order at 19 ("The records in both this and the related case show a clear and undisputed breach of this [FOIA response deadline] requirement."); October 21, 2015 Order at 18-19 ("the Court has received showing [of] an unmistakable history that the Fisheries Service fails to meet its statutory deadlines under FOIA and causes Plaintiffs (and likely others similarly situated) to suffer unpredictable, unreasonable delays.").[18]

Judge Conti also found that in litigating this case, NMFS repeatedly failed to explain with sufficient detail the adequacy of its searches and the reasons for its withholdings – thereby necessitating additional rounds of briefing by the parties and orders by the court.[19] As such, I

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[18] Judge Conti's repeated use of strong adjectives like "troubling" and "unreasonable" separates this case from those relied on by NMFS where fees were denied because delayed responses were caused by confusion or "bureaucratic difficulty" in handling requests. Oppo. at 14.

[19] I recognize that Judge Conti ultimately found that NMFS had conducted adequate searches and appropriately withheld all documents except one. But those conclusions were reached only after multiple rounds of briefing and decision, necessitated by NMFS's initially deficient declarations and *Vaughn* indexes.

conclude that neither NMFS's general responses to the FOIA requests nor its litigation position before this Court had a reasonable basis in law.

In sum, plaintiffs are entitled to an award of attorney's fees. The next step is to determine the amount owed.

III. REASONABLE AMOUNT OF ATTORNEY'S FEES AND COSTS

"[O]nce the court has determined that the plaintiff is both eligible for and entitled to recover fees, the award must be given and the only room for discretion concerns the reasonableness of the amount requested." *Long*, 932 F.2d at 1314. In making this determination, the court must scrutinize the reasonableness of (i) the hourly rates and (ii) the number of hours claimed. *Id.* at 1313-14. "If these two figures are reasonable, then there is a strong presumption that their product, the lodestar figure, represents a reasonable award." *Id.* at 1314 (internal quotation marks omitted). Nevertheless, a court "may authorize an upward or downward adjustment from the lodestar figure if certain factors relating to the nature and difficulty of the case overcome this strong presumption and indicate that such an adjustment is necessary." *Id.*

A. Hourly Rate

NMFS argues plaintiffs' hourly rates are excessively high, and that the Court should apply the hourly rates set forth in the *Laffey* matrix plus locality adjustments, which would result in a decrease of 22.9% in the requested lodestar. Oppo. at 20-22. As I recognized in *Public.Resource.org v. United States Internal Revenue Serv.*, No. 13-CV-02789-WHO, 2015 WL 9987018, at *6 (N.D. Cal. Nov. 20, 2015), "[a]bsent some showing that the rates stated in the matrix are in line with those prevailing in this community . . . I agree [that] that the matrix is not persuasive evidence of the reasonableness of its requested rates." As in *Public.Resource.org*, I will not bind plaintiffs to the *Laffey* matrix, especially as statutory fee awards from this District do not establish that the *Laffey* matrix rates are in line with prevailing rates for statutory fee cases in the Bay Area legal community. *See, e.g.*, *Public.Resource.org* (awarding rates from $205 for paralegals up to $645 for senior/lead counsel); *Sierra Club*, 75 F. Supp. 3d at 1152-53 (approving hourly rates of $350 to $650 in FOIA action); *Rosenfeld*, 904 F. Supp. 2d at 1001, 1004 (approving hourly rates of $460, $550, and $700 in FOIA action); *Hajro v. U.S. Citizenship &*

Immigration Servs., 900 F. Supp. 2d 1034, 1054 (N.D. Cal. 2012) (approving hourly rates of $450 to $625 in FOIA action) *vacated and remanded on other grounds*, 2015 WL 6405473 (9th Cir. Oct. 23, 2015); *see also Hiken v. Dep't of Def*., 836 F.3d 1037, 1039 (9th Cir. 2016) (reversing district court order awarding fees at matrix rate).

The rates sought by counsel in this case are, generally, higher than the rates approved in other recent FOIA cases in this District. They are also, more importantly, significantly higher than rates that were requested and approved by these *same* counsel in recent cases in this District for environmental litigation. *See, e.g.*, *OCE v. EPA*, 13-cv-02857 (Dkt. Nos. 82, 99) (awarding fees from $435 to $655/hr for work through early 2015); *San Francisco Baykeeper v. West Bay Sanitary Dist*., No. 09-5676, 2011 WL 6012936 (N.D. Cal. Dec. 1, 2011) (approving $585/hr for Sproul). Plaintiffs argue this upward departure is warranted because in the past they have relied on the *Laffey* matrix with locality adjustments, but recent cases confirm those rates under-compensate them. *See, e.g.,* Declaration of Christopher Sproul [Dkt. No. 88] ¶ 15; Declaration of Patricia Weisselberg [Dkt. No. 86] ¶ 9.

Plaintiffs undertook a "market rate" analysis and seek compensation for that research from *this* case. The analysis was performed primarily by billing attorney Christopher Hudak. Hudak reviewed fee awards in a number of different types of cases from the Northern District, including class action litigation (antitrust, wage and hour, consumer protection, and securities) as well as one anti-SLAPP case and one FOIA case. *See, e.g*., Declaration of Christopher Hudak [Dkt. No. 84] ¶¶ 11-32. The market rate analysis did not consider more than one FOIA case (despite there being a number of cases on point) nor did it directly consider cases awarding statutory fees for environmental litigation.[20]

Plaintiffs have not demonstrated that the rates they seek here are reasonable for FOIA

[20] The OCE attorneys did rely for "data points" on the Declaration of Richard M. Pearl from a state court case, *Citizens Committee To Complete The Refuge, Inc. v. City of Newark*, Case No. RG10530015, (CA Superior Ct. County of Alameda). The Pearl declaration focused on attorney's fees rates through 2014, and did review some statutory fee-shifting awards, as opposed to the class action attorney's fee awards focused on by the plaintiffs here. *See, e.g.,* Weisselberg Decl. ¶¶ 11-16; Sproul Decl., Ex. 32; Hudak Decl. ¶ 34.

litigation (or environmental fee-shifting litigation). They seek to downplay the fact that in cases from 2014 and 2015 *these same attorneys* requested significantly lower attorney's fee rates. I do not believe the case law supports limiting plaintiffs to their prior requested rates, but I do believe that any *significant* upward departure should be justified, for example, by declarations explaining the increases in light of increased expenses from doing business and practicing in certain markets or other factors. I also do not find plaintiffs' focus – as support for their requested hourly rates in these cases – on large scale, complex class action cases to be persuasive. That is not to say that FOIA cases cannot be complex. But the high rates awarded for complex class action cases can be explained in large part by the necessity in those cases for plaintiffs' counsel to incur significant cost outlays (for experts, document review systems, travel, depositions, etc.) as well as attorney time (to review hundreds of thousands of documents, numerous depositions, etc.) which are not typically required in FOIA cases and were not required in these cases.

Accordingly, I find that the hourly rates plaintiffs request here are not adequately supported and are not reasonable. This conclusion is consistent with *Hiken v. Dep't of Def.*, 836 F.3d 1037, 1044–46 (9th Cir. 2016), where the Ninth Circuit confirmed that a "reasonable rate" is the rate prevailing "in the community" for "similar work" performed by attorneys of comparable skill and experience and based on record evidence of prevailing historical rates. I do not find that plaintiffs' survey is based on the performance of "similar work" by attorneys of comparable skill and experience.

Plaintiffs shall recalculate their lodestar based on hourly rates that are consistent with the rates they requested in prior FOIA or environmental cases for the same time periods. For example, time spent on these cases in 2015 should be sought at the same rate previously sought and/or awarded by a court for time spent in 2015. For time in 2016 – as to which plaintiffs may have not had an hourly rate approved by another court – plaintiffs are entitled to a 10% increase over their 2015 approved-rates, absent specific justification supported by a declaration explaining why a particular attorney or paralegal should be granted a higher percentage increase.[21]

[21] For any biller in these cases who has not had a prior-court-submitted or approved billing rate, plaintiffs shall use a prior-court-approved billing rate for an attorney or paralegal of comparable

B. Hours Expended

NMFS also argues that the hours sought by plaintiffs cover time and tasks that were neither necessary nor reasonable for the prosecution of these suits and asks me to reduce the requested fee amount for the following:

- A $188,381.47 reduction for plaintiffs' work on the claims they lost;
- A $26,686.22 reduction for work on pleadings and other papers that were never filed;
- A $89,442.20 reduction for work performed at the administrative stage and review of documents produced;
- A reduction for work unrelated to *OCE I* and *OCE II*; and
- A 30 – 50% reduction generally for excessive, redundant, and unnecessary work.[22]

1. Claims Lost

NMFS argues that plaintiffs are not entitled to $188,381.47 in fees (calculated at the hourly rates that NMFS objects to) for "distinct" claims they lost: (i) claims against FWS and the Corps; (ii) claims regarding the adequacy of the searches in *OCE II* (based on a frivolous argument that NMFS's declarant's testimony was "hearsay"); (iii) unsuccessful challenges to NMFS's withholdings; (iv) claims regarding actual and pattern and practice search cut-off dates; and (v) plaintiffs' response to the October 21 2015 Order to Show Cause as to whether further injunctive relief was necessary.[23]

With respect to the $3,506.18 incurred with *OCE III*, plaintiffs admit they do not seek to recover for that time. So there is no longer a dispute as to that time/amount. The only other unsuccessful legal theory/claim NMFS "breaks out" time for is the $23,032.40 plaintiffs charge

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experience.

[22] Plaintiffs explain that before submitting their request, most billers took 10% of the time billed "off the top" to account for any potential inefficiencies or redundancies in their work. Sproul Decl. ¶¶ 92, 97; Weisselberg Decl. ¶ 41; Isaacs Decl. ¶¶ 6-7; Costa Decl. ¶ 6; Hudak Decl. ¶ 35 (worked over 100 hours, but seeking payment for approximately 30 hours).

[23] NMFS breaks down the $188,381.47 (or more accurately $188,381.48) as follows: $23,032.40 for 37.1 hours spent on the opposition to NMFS's showing in response to Judge Conti's OSC; $161,842.90 as a 50% reduction from the $323,685.79 plaintiffs billed for pleadings, summary judgment, supplemental briefing and the joint submission; and $3,506.18 incurred with *OCE III*.

for 37.1 hours spent responding to NMFS's showing in response to Judge Conti's Order to Show Cause. Oppo. 17. However, I find that that time was reasonable and necessary. Judge Conti's OSC raised significant questions regarding the steps NMFS was taking to address its FOIA backlog, and NMFS filed a detailed response, supported by declarations. Plaintiffs filed a brief to contest some of the assertions made by NMFS, but that pleading was helpful and relied on by me in determining whether any live issues remained in the litigation, even though I denied plaintiffs' request for further injunctive relief as to the backlog.

NMFS does not break out the time spent on the other "unsuccessful" issues because plaintiffs' billing records do not allow them to. NMFS instead argues the 595.6 hours/$323,685.79 plaintiffs billed to pleadings for the summary judgment, supplemental briefing, and the joint submission required by the October 2015 Order should be reduced by 50% to account for plaintiffs' other losing claims/theories. Oppo. 17-18; Wall Decl., Ex. B (Summary Fee Analysis). I disagree.

As to claims against FWS and the Corps for their alleged part in causing repeated delays in NMFS's FOIA responses, while plaintiffs were not ultimately successful in their claims against those entities, the claims made were part and parcel of the impermissible and excessive delay claims against NMFS. This time is compensable.

As to claims regarding the adequacy of the searches in *OCE II* (based in part on the argument that NMFS's declarant's testimony was hearsay), while plaintiffs eventually lost this claim, Judge Conti forced NMFS to submit supplemental briefing explaining the adequacy of its searches. NMFS's initial explanations, therefore, were deficient and plaintiffs' successfully argued that deficiency to Judge Conti in their initial and supplemental briefing. This time is compensable.

As to the unsuccessful challenges to NMFS's withholdings, plaintiffs eventually lost all but one of these claims. But in the process of the initial and supplemental rounds of briefing, NMFS agreed to produce more documents and NMFS had to explain its actions in greater detail due to deficiencies in their initial briefing and declarations. This time is compensable.

And as to the eventually unsuccessful claim regarding NMFS's pattern and practice of

applying improper search cut-off dates, while plaintiffs did not secure an order from Judge Conti finding that NMFS had an illegal pattern or practice, the record supports at least an inference that during this litigation NMFS implemented a new or clarified policy. Even assuming it was simply a clarified policy, that clarification produced a public benefit for future FOIA requestors. This time is compensable.

2. Pleadings and Papers Never Filed

NMFS argues that plaintiffs should not be compensated for 49.1 hours/$26,686.22 for work on pleadings that were never filed, including draft amended complaints in *OCE I* and *OCE II*, a motion for reconsideration, and a motion for relief. Wall Decl., Ex. G (Unfiled Papers).

In reply, Sproul explains: (i) the work done on the unfiled SAC in May 2014 in *OCE I* was used on the motion for summary judgment in *OCE I* and is therefore compensable (Sproul Reply Decl. ¶ 5); (ii) the 3.16 hours billed in February 2015 for a "motion for relief" was in fact work done for the Notice Regarding Submitted Matter and Request For Ruling filed on March 2, 2015 (*id.* ¶ 6); (iii) 13.19 hours of work in October 2014 was for a pleading filed in *OCE II*, Dkt. 58 (*id.* ¶ 7); (iv) 1.32 hours of time billed in May 2015, was cut from the request on plaintiffs' Reply (and not currently sought); and (iv) the remaining hours that were spent on the unfiled motion for reconsideration in January 2016 are compensable because that unfiled motion was used as leverage to get NMFS to agree to a form of judgment and produce additional documents. *Id.* ¶ 8. Weisselberg also, on review, cut 0.56 of time from her entries challenged in Wall's Ex. G, because those entries represented work on what was to become *OCE III*. Weisselberg. Reply Decl. ¶ 11.

Considering the declarations, I find that all of the challenged time except the time spent on the unfiled motion for reconsideration is compensable. Plaintiffs have adequately identified how the time identified by NMFS was spent or used for pleadings actually filed in this action. However, the time spent on the unfiled motion for reconsideration in January 2016 was created voluntarily by plaintiffs and used for "leverage" but was never necessary or useful for any contested decision made by me.

3. Administrative Efforts

NMFS wants a further reduction for 157.7 hours/$89,442.20 that plaintiffs spent drafting

FOIA requests, working on the agency administrative appeals, and reviewing the documents produced. Wall Decl., Ex. I. Generally, "work performed during the pre-litigation administrative phase of a FOIA request is not recoverable under FOIA." *Elec. Privacy Info. Ctr. v. United States Dep't of Homeland Sec.*, 811 F. Supp. 2d 216, 237 (D.D.C. 2011); *but see Public.Resource.org,* 2015 WL 9987018, at *8 (allowing recovery for two time entries on letters seeking agency reconsideration "given the clear overlap in subject matter between the letter and this litigation, the letter's explicit contemplation of a lawsuit, and the proximity in time between the letter and the filing of" the complaint).

In their Reply and supporting declarations, plaintiffs cut some of the contested time for work on the FOIA requests and administrative appeals, but kept the time spent on two specific FOIA requests in. As explained by lead counsel Sproul:

> I and my co-counsel have been mindful that we are not entitled to recover for drafting all our FOIA requests and reviewing all the documents obtained for the purpose of learning the substantive content of those documents for the Plaintiffs' citizen suit litigation against Stanford or larger public advocacy campaign related to Stanford and the San Francisquito Creek watershed. However, we have concluded that we may recover for time spent drafting FOIA requests specifically intended to garner information for use in this litigation and reviewing documents for such litigation purposes. I and my co-counsel have carefully segregated the time spent drafting FOIA requests reviewing documents such that we are seeking recovery only for the latter time. With respect to drafting FOIA requests, we are seeking to recover for time spent drafting (or appealing responses concerning) only two of the multiple FOIA requests at issue in this proceeding that Plaintiffs specifically used to gather information used as evidence against NMFS in this case: FOIA requests sent on April 3, 2014 and November 24, 2015. (the latter is Exhibit M to the Wall Declaration, (OCE I, Dkt. 92-1). The April 3, 2014 FOIA sought documents concerning the searches done by NMFS and the responses provided by NMFS to Plaintiffs in response to their FOIA requests with the aim of developing evidence that NMFS's searches have not complied with FOIA. Plaintiffs' November 24, 2015 FOIA request sought documents with the specific intent of trying to garner evidence that Plaintiffs' litigation had catalyzed NMFS to respond more promptly to Plaintiffs' FOIA requests. The aim was to develop evidence in support of catalyst theory arguments for purposes of attorney fees recovery in settlement and, if necessary, a fees motion. Plaintiffs' November 24, 2015 FOIA Request sought documents related to NMFS's assertions that it had instituted several FOIA reforms also with the specific intent of trying to garner evidence that Plaintiffs' litigation had catalyzed NMFS to institute these reforms. Again, our aim was to develop evidence in support of catalyst theory arguments for

> purposes of attorney fees recovery in settlement and, if necessary, a fees motion. As discussed in the Reply Declaration of Patricia Weisselberg, Plaintiffs have in fact used documents obtained in response to their FOIA requests as exhibits supporting the catalyst theory arguments they are advancing in their Fees Motion and plaintiffs agree to reduce some of their time spent on drafting the FOIA requests and the administrative appeals.

Sproul Reply Decl. ¶ 10.

Accordingly, Michael Costa cut 11.91 hours/$6,148.98 for drafting FOIA requests and appeals, except for the work he did on the April 3, 2014 and November 24, 2015 FOIA requests that were aimed at gathering information for this lawsuit. Costa Reply Decl. ¶ 3. Jodene Isaacs cut 11.21 hours/$5,599.40 for drafting FOIA requests and appeals. Isaacs Reply Decl. ¶ 2. Weisselberg cut 8.74 hours spent on FOIA appeals, included in Wall's Ex. I. Weisselberg Reply Decl. ¶ 13.

The bulk of the remaining time appears to be for document review conducted primarily by Costa and Isaacs. NMFS argues that document review is simply not compensable. *See, e.g.*, *Sierra Club v. United States EPA*, 75 F. Supp. 3d 1125, 1149 (N.D. Cal. 2014) ("As Plaintiffs received, at least in part, the relief they sought when the EPA produced the documents, the time they expended reviewing the documents was is properly characterized as post-relief activity, separate from the litigation."); *Citizens for Responsibility & Ethics v. United States DOJ*, 825 F. Supp. 2d 226, 231 (D.D.C. 2011) ("Plaintiff would have had to expend this time had DOJ timely produced the documents without litigation; the cost of reviewing documents produced in response to a FOIA request is simply the price of making such a request.").

Plaintiffs respond that in this case, where the adequacy of NMFS's searches and withholdings were central claims, plaintiffs needed to spend significant amounts of time reviewing the documents to support those claims in litigation. That might be true – but plaintiffs' withholding claims were almost totally rejected (except for one document) and plaintiffs' inadequate search claims were likewise mostly unsuccessful (except for two narrow wins in *OCE I*). Plaintiffs also do not cite any case law allowing for recovery of time spent reviewing document productions where that review is necessary for a plaintiff to be able to challenge the adequacy of an agency's search or the propriety of withholdings.

Based on the declarations, I find that the Costa time spent on the two identified FOIA requests is compensable, given the overlap in subject matter between requests and this litigation as well as the proximity in time between those requests and the filing of pleadings in this case. The time spent reviewing the documents produced is not compensable.

4. Work Unrelated to *OCE I* and *OCE II*

NMFS argues that plaintiffs should not be compensated for 8.9 hours/$4,461.23 billed by Sproul, Weisselberg, Isaacs, and Costa that it contends is unrelated to *OCE I* and *OCE II*, including litigation with Stanford and entries related to FWS and the Corps. Wall Decl., Ex. H (Unrelated Matters). In Reply, Weisselberg explains the relevance of her entries listed on Exhibit H to *OCE I* and *OCE II*. Weisselberg Reply Decl. ¶ 12. Sproul also addresses the 8.9 hours listed in Exhibit H, and other than two mistakes accounting for 0.35/hours (which were cut in the Reply) adequately explains that those hours billed were necessary for *OCE I* and *OCE II*. Sproul Reply Decl. ¶ 9; *see also* Costa Reply Decl. ¶ 16. This time is compensable.

NMFS also argues that plaintiffs have (perhaps inadvertently) claimed time for work on *OCE III*, despite their claim that they are not seeking that time. In its Opposition and supporting declaration, NMFS identified 5.9 hours/$3,506.18 it contends was incurred on *OCE III*. *See* Wall Decl., Ex. D. As noted above, this time is not compensable.

5. Reduction for Excessive or Redundant Work

NMFS asks the Court to reduce by 30-50% any fee award to account for excessive, cumulative, and inefficient billing. Oppo. at 24. NMFS specifically challenges: (i) the 158 hours spent on the opening attorney's fees motion and declarations; (ii) 249 hours on summary judgment and supplemental briefing in *OCE I*; (iii) 263.8 hours on summary judgment and supplemental briefing in *OCE II*; (iv) 157.7 hours on the "administrative phase" including record review; and (v) the fact that five attorneys worked on the case, which NMFS contends is excessive given the nature of these cases and is demonstrated by the 173.7 hours/$107,885.73 billed for telephone calls and email correspondence between counsel for "coordination" purposes. Wall Decl., Ex. F (Coordination Activities).

In their Reply declarations, two of the billing attorneys exercised "more" billing judgment

to cut hours in light of potential redundancy. *See* Costa Reply Decl. ¶ 4 (cutting 4.05 hours/$2,136.38); Isaacs Reply Decl. ¶ 3 (cutting just over 14 hours/$7,087.91). No other reductions for excessive or redundant work appear to have been made, other than the 10% "off the top" that each of the billing attorneys took off their time initially.

The time spent on the opening attorney's fees motion and declarations is excessive and unreasonable. In particular, plaintiffs should not be compensated for the time Hudak spent (unsuccessfully as addressed above) surveying cases in order to determine what billing rates should be used for plaintiffs in this fee motion. Moreover, the time spent in drafting the fee motion – which itself does not raise any unique issues or issues of first impression – is excessive. Plaintiffs purport to be experienced FOIA and environmental litigators; submission of fee petitions is a regular part of that work. I recognize that reviewing the time records, exercising billing judgment, and creating supporting declarations will take significant time in each case no matter how experienced counsel is. But the time spent on the *brief* appears to be excessive in and of itself. A 25% reduction in the time spent on the opening attorney's fees motion is appropriate, as is elimination of the time Hudak spent on his inapposite attorney's fees survey.

As to time spent on the Reply brief and declarations (which NMFS did not have the opportunity to attack), I conclude that the time spent on the brief itself it reasonable, but not the time spent reviewing the time slips and submitting supplemental declarations, because much of *that* time was spent accounting for errors pointed out by NMFS and then making additional reductions for improper or otherwise redundant billing. Only 50% of the time spent on the declarations in support of the Reply is compensable.

As to the 249 hours spent on summary judgment and supplemental briefing in *OCE I* as well as the 263.8 hours spent on summary judgment and supplemental briefing in *OCE II*, I find that the time is reasonable and compensable. The summary judgment briefing was extensive, detailed and addressed a number of issues where there was little precedent. In these circumstances I cannot say the time spent was unreasonable.

As to the 157.7 hours on the "administrative phase" including record review, as noted above, plaintiffs have voluntarily cut all time on drafting the FOIA requests, except for time Costa

spent on two, and I have already found that time spent reviewing the documents produced is not compensable.

Finally, as to the time spent on coordination between counsel, I find that 173.7 hours is excessive. While this case was complex in the sense that there were a large number of FOIA requests at issue, at least three lawsuits filed, and multiple rounds of summary judgment and additional briefing required, the sheer number of attorneys involved – many of whom it appears were involved in part because of the Stanford litigation – meant that there was an excessive amount of "coordination." A 25% reduction in the amount of time spent on coordination is appropriate.

C. Costs

Plaintiffs seek $3,190.39 in costs. Dkt. No. 94. NMFS does not oppose the amount of costs, but argues instead that in light of the limited nature of plaintiffs' success and the agency's good faith, costs are not warranted. Oppo. at 24-25. Having concluded that plaintiffs are substantially prevailing and that the agency's defenses were without a reasonable basis in law, an award of costs is appropriate. Plaintiffs are awarded $3,190.39 in costs.

CONCLUSION

For the foregoing reasons, plaintiffs will be awarded attorney's fees, but at a significantly reduced amount, and are awarded $3,190.39 in costs.

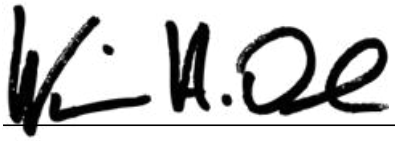
Within twenty days of the date of this Order, plaintiffs shall, after meeting and conferring with defense counsel, submit a *joint* supplemental brief and proposed judgment containing a revised request for attorney's fees that excludes all of the time I have identified above as not being compensable. The parties shall make all reasonable efforts to reach agreement on the time to be included in light of the time that has been excluded by this Order. If the parties cannot agree, any remaining disputes shall be explained in no more than two pages.

Plaintiffs must also recalculate their lodestar, using hourly rates that were approved for them in past years and using a rate for 2016 that is no more than 10% above their 2015 rates, unless otherwise justified. At the time the joint supplemental brief and proposed judgment is filed, plaintiffs shall submit a declaration explaining and identifying: (i) the rates for each biller for each

year billed; (ii) the case(s) for which each biller's rates have been requested and approved; (iii) the basis for the 2016 hourly rates sought; and (iv) the basis for any hourly rate sought for a biller who has not had her or his time approved by a prior court order.

IT IS SO ORDERED.

Dated: March 1, 2017



William H. Orrick
United States District Judge

United States District Court
Northern District of California

FOIA Summons
1/13

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Public Employees for Envt'l 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	Submitted
DOC-NOAA-2017-001275	Request	MICHAEL PEPSON	Cause of Action	05/24/2017
DOC-NOAA-2017-001267	Request	Raimundo Espinoza	Conservacion ConCiencia	05/23/2017
DOC-NOAA-2017-001265	Request	Mirabai H. Galashan		05/23/2017
DOC-NOAA-2017-001264	Request	Mirabai H. Galashan		05/23/2017
DOC-NOAA-2017-001263	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017
DOC-NOAA-2017-001262	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017
DOC-NOAA-2017-001261	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017
DOC-NOAA-2017-001260	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017
DOC-NOAA-2017-001259	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017
DOC-NOAA-2017-001258	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017
DOC-NOAA-2017-001257	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017
DOC-NOAA-2017-001256	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017
DOC-NOAA-2017-001255	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017
DOC-NOAA-2017-001254	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017
DOC-NOAA-2017-001252	Request	Karen Markin		05/23/2017
DOC-NOAA-2017-001247	Request	Dan Vergano (Matt Schafer)	BuzzFeed	05/22/2017
DOC-NOAA-2017-001233	Request	Derek Miller	Saving Seafood	05/19/2017
DOC-NOAA-2017-001238	Request	Dale Perkins		05/19/2017
DOC-NOAA-2017-001230	Request	Maurice Tamman	Reuters	05/18/2017
DOC-NOAA-2017-001220	Request	Nathan Eagle	Honolulu Civil Beat	05/16/2017
DOC-NOAA-2017-001219	Request	Nathan Eagle	Honolulu Civil Beat	05/16/2017
DOC-NOAA-2017-001218	Request	Nathan Eagle	Honolulu Civil Beat	05/16/2017
DOC-NOAA-2017-001217	Request	Nathan Eagle	Honolulu Civil Beat	05/16/2017

Received	Assigned To	Case File Assigned To	Perfected?	Due	Closed Date
05/24/2017	NMFS	NMFS	Yes	06/23/2017	TBD
05/24/2017	Arlyn E. Penaranda	Arlyn E. Penaranda	Yes	06/22/2017	TBD
05/24/2017	NMFS	NMFS	Yes	06/23/2017	TBD
05/24/2017	NMFS	NMFS	Yes	06/23/2017	TBD
05/24/2017	Lola Stith	Lola Stith	No	TBD	05/25/2017
05/24/2017	Lola Stith	Lola Stith	No	TBD	05/25/2017
05/24/2017	AGO	AGO	Yes	06/22/2017	TBD
05/24/2017	Lola Stith	Lola Stith	No	TBD	05/24/2017
05/24/2017	AGO	AGO	Yes	06/22/2017	TBD
05/24/2017	Lola Stith	Lola Stith	No	TBD	05/24/2017
05/24/2017	AGO	AGO	Yes	06/22/2017	TBD
05/24/2017	Lola Stith	Lola Stith	No	TBD	05/24/2017
05/24/2017	Lola Stith	Lola Stith	No	TBD	05/24/2017
05/24/2017	AGO	AGO	Yes	06/22/2017	TBD
05/23/2017	AGO	AGO	Yes	06/22/2017	TBD
05/22/2017	OGC	OGC	Yes	06/20/2017	TBD
05/19/2017	NOS	NOS	Yes	06/22/2017	TBD
05/19/2017	Sophia Howard	Sophia Howard	Yes	06/20/2017	TBD
05/18/2017	Arlyn E. Penaranda	Arlyn E. Penaranda	Yes	06/22/2017	TBD
05/17/2017	USEC	USEC	Yes	06/22/2017	TBD
05/17/2017	Kehaupuaokal Kamaka	Kehaupuaokal Kamaka	Yes	06/20/2017	TBD
05/17/2017	Lola Stith	Lola Stith	Yes	06/20/2017	05/24/2017
05/17/2017	Kehaupuaokal Kamaka	Kehaupuaokal Kamaka	Yes	06/20/2017	TBD

2:32:52

Status	Dispositions
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Assignment Determination	
Closed	Other - Aggregate cases
Assignment Determination	
Closed	Other - Aggregate cases
Assignment Determination	
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Closed	Other - Publicly available information
Assignment Determination	

Detail

Pursuant to the FOIA, CoA Institute hereby requests access to the following records for the time period of October
I'm writing in regards to a shark fin investigation originating in Puerto Rico where it's been reported that 54 shark fi
Transcript of NOAA public meeting September 8, 2016, 5:30-9:30 p.m. Kealakehe High School Cafeteria, 74-5000
Peer review and conflict of interest reports for Tyne, J. A., Pollock, K. H., Johnston, D. W., & Bejder, L. (2014)
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SC
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SC
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REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SC
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SC
Proposal titled "Archaeological oceanographic exploration of the Northern Black Sea and Eastern Aegean --
Please consider this a request pursuant to FOIA for any and all records requested by Judicial Watch and currently
Saving Seafood seeks any correspondence between staff of NOAA's office of National Marine Sanctuaries and sta
I would like some socio-economic data for a racial composition study. Please provide the racial/ethnicity of the follo
This request relates to the Vessel Monitoring System (VMS) that is maintained by the National Marine Fisheries Se
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 Fishe
I'd like to request information relating to special funds of the Western Pacific Regional Fishery Management Counc
I'd like to request financial information concerning the Western Pacific Regional Fishery Management Council (WP

31, 2016 to the present: 1. The processing notes for CoA Institute's FOIA request dated October 31, 20
ns were illegally transported to Florida during 2016. The information I'm requesting is any information re
Puohulihuli St., Kailua-Kona, HI 96740
). Abundance and Survival Rates of the Hawai'i Island Associated Spinner Dolphin (Stenella longirostris)
2CQ0021 Task Order 0006 awarded to I.M. Systems Group, Inc. (IMSG).
2CQ0021 Task Order 0005 awarded to I.M. Systems Group, Inc. (IMSG).
ITECH Contract DOCDG133E12CQ0021 Task Order 0003, Task Order 0005, AND Task Order 0006 av
2CQ0020 Task Order 0007 awarded to Earth Resources Technology, Inc. (ERT).
ITECH Contract DOCDG133E12CQ0020 Task Order 0007 AND Task Order 0008 awarded to Earth Res
0CQ0031 Task Order 0002 awarded to Science and Technology Corporation (STC).
ITECH Contract DOCDG133E10CQ0031 Task Order 0002 and Task Order 0008 awarded to Science ar
0CQ0034 Task Order 0006 awarded to Global Science and Technology, Inc.
0CQ0034 Task Order 0002 awarded to Global Science and Technology, Inc.
ITECH Contract DOCDG133E10CQ0034 Task Order 0004, Task Order 0002, AND Task Order 0006 av
Archaeological landscape surveys using AUV/ROV and sonar vehicles in the water." Awardee was
subject to litigation in Judicial Watch, Inc. v. Dep't of Commerce, No. 15-cv-2088. This includes all reco
aff of the National Marine Sanctuary Foundation (https://www.marinesanctuary.org/) regarding the Monte
owing fishery participants; 1. Red Snapper IFQ share holders. 2. IFQ dealers. 3. Charterboat/Headboat r
ervice, Office for Law Enforcement and managed by Kelly Spalding (kelly.spalding@noaa.gov/301.427.8
PRFMC). Specifically, I'm requesting: 1) Documents sufficient to show the amount of time spent by WP
ry Management Council (WPRFMC). Specifically, I'm requesting: 1) Documents sufficient to identify the
cil (WPRFMC). Specifically, I'm requesting: 1) The general ledger in the greatest level of detail for the W
PRFMC). Specifically, I'm requesting: 1) The WPRFMC formal books of accounts over the 5 years prece

)16, tracking number DOC-NOAA-2017-000168, and the NOAA Tasker memorandum regarding or relat
garding the case that can be made available without interfering with a successful prosecution or aren't c

) Stock. PLoS ONE, 9(1), e86132. http://doi.org/10.1371/journal.pone.0086132. This SAPPHIRE researc

varded to I.M. Systems Group, Inc. (IMSG). ---------- W

ources Technology, Inc. (ERT). ---------- We are

nd Technology Corporation (STC). ---------- V

warded to Global Science and Technology, Inc. ----------
s Sea Research Foundation, Inc., of Connecticut. Start date, August 1, 2008. Award number NA08OAR4
rds previously produced to Judicial Watch in that litigation and referenced below in my May 16 correspor
rey Bay National Marine Sanctuary. We are also seeking any correspondence between staff of NOAA's
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
RFMC staff on lobbying activities from 2014 to 2017. By lobbying activities, I am referring to any
name and position of all WPRFMC staff for the 5 years preceding a response to this request. 2) For eac
estern Pacific Sustainable Fisheries Fund over the 5 years preceding a response to this request.
ding a response to this request, including a cash receipts and disbursements journal, a general journal,

ed to this request. 2. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tra
onfidential. Information requested included but isn't limited to: - Confirmed total number of fins seized - S

ch project sponsored by NOAA and captive dolphin corporation Dolphin Quest is cited in the draft EIS Er

e are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCD

requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133

We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOC

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ndence.
office of National Marine Sanctuaries and the California Marine Sanctuary Foundation (http://www.califo
Account Shareholders Additionally please provide the average weight of red snapper caught by the com
gitude, and date for all commercial vessels sailing from Atlantic ports for as far back as data is available
effort to influence legislation or executive action, including indirect or grassroots lobbying. 2) All WPRFM
ch person identified, documents sufficient to identify the individual's employment status, including but no
I would like this record provided in electronic format; if the information cannot be exported in an Excel c
and a general ledger, in the greatest level of detail available without need for redaction. I would like this

ıcking number DOC-NOAA-2017-000169, and the NOAA Tasker memorandum regarding or related to tl
Shark species involved in case - Who are the indivuduals/company/companies being held responsible ir

ıhancing protections for Hawaiian Spinner Dolphins http://www.cio.noaa.gov/services_programs/NOAA_

)G133E12CQ0021 Task Order 0003 awarded to I.M. Systems Group, Inc. (IMSG).

3E12CQ0020 Task Order 0008 awarded to Earth Resources Technology, Inc. (ERT).

:DG133E10CQ0031 Task Order 0008 awarded to Science and Technology Corporation (STC).

Contract DOCDG133E10CQ0034 Task Order 0004 awarded to Global Science and Technology, Inc.

ırniamsf.org/index.html) regarding the Monterey Bay National Marine Sanctuary. We are looking for corr
mercial sector and the average weight of red snapper caught by the recreational sector. This email addı
. I am also requesting a summary of all commercial fishing vessels that should include a count of those
IC 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
ır comma-delimited format, please let me know available formats. 2) To the extent not otherwise produc
record(s) provided in electronic format; if the information cannot be exported in an Excel or comma-deli

his request. 3. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tracking
the shark finning and transport? - Who and what penalties have been issued if any? (fines, etc) - Any c

_PRB_COI_Policy_110606.html accessed 10/21//16 "Requires Public Notice For peer reviews of informa

espondence sent or received between January 1, 2016 and December 31, 2016.
ess will be fine for the response.
vessels in each of the two Atlantic regions by day and region from which they began the trip. I am reque
r the 10 years preceding a response to this request. 3) All requests from federal or state legislators for
ual serves as full- or part-time staff. 3) For each staff member identified, documents sufficient to show a
ed with the general ledger, documents sufficient to show all funding received by and the current balance
mited format, please let me know available formats. 2) Documents sufficient to identify and describe coc

number DOC-NOAA-2017-000170, and the NOAA Tasker memorandum regarding or related to this req
ther information available to the public Conservación ConCiencia is a Puerto Rico registered no

ation subject to the OMB Bulletin, NOAA will disclose the names of the reviewers and their affiliation in a

sting the data for a far back as the data is available.
VPRFMC to provide testimony, commentary, or technical or factual presentations about WPRFMC activ
ll expenditures or disbursements, including but not limited to salaries, travel expenses, per diem payme
s of the Western Pacific Sustainable Fisheries Fund. 3) To the extent not otherwise produced with the g
des used in the WPRFMC formal books of accounts, including but not limited to the organization, fund, p

uest. 4. All communications—including, but not limited to, e-mail,5 instant messaging, Google hangouts
n-profit organization dedicated to environmental research and conservation that promotes sustainable d

report of findings and conclusions prepared by the peer reviewers. The report will be posted on the Dep

vities for the 10 years preceding a response to this request. 4) Any notices from WPRFMC to NOAA Reg
nts, bonuses, and reimbursed expenses, made by WPRFMC to that person over the 2 years preceding
general ledger, documents sufficient to show all expenditures from the Western Pacific Sustainable Fish
program, project-task, and object class codes. 3) Any handbook, manual, policies, or guidance used by

or Google chat messages, text messages, SMS messages, Blackberry messages, Skype messages, h
evelopment by working in collaboration with communities, NGOs, governments, academia and the priva

partment of Commerce Information Quality web site (http://www.osec.doc.gov/cio/oipr/info_qual.html). “ T

gional Counsel regarding contact with federal or state legislators or testimony before legislative committe
a response to this request. 4) Documents sufficient to identify the name of each WPRFMC Council mem
eries Fund. 4) Documents sufficient to identify who has authority to approve and the procedures for appr
or used to train accounting staff that concerns entering data into the WPRFMC formal books of accounts

andwritten notes, or communications through any other media—between NOAA and the Office of the W
te sector. Within the next year, we're planning on launching Puerto Rico's firs

This link has been inoperable on repeated attempts to access it between 8/27/16 per NOAA_PRB_COI_

ees for the 10 years preceding a response to this request. 5) All WPRFMC Forms SF
nber for the 2 years preceding a response to this request. 5) For each Council member
roving expenditures from the Western Pacific Sustainable Fisheries Fund. 5) To th
s. 4) To the extent not otherwise disclosed with the formal books of accounts, document

/hite House Counsel concerning or re

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From: Samuel Dixon <samuel.dixon@noaa.gov>
Sent: Thursday, May 25, 2017 1:42 PM
To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate; Steven Goodman - NOAA Federal
Subject: Fwd: FOIA Request Regarding Vaquitas
Attachments: Vaquita -- FOIA Request.pdf; RE: [Non-DoD Source] Connecting Nicole and John re: Vaquita Permitting issues; RE: [Non-DoD Source] Re: US Navy and Vaquita; FW: [Non-DoD Source] Call Request for Eileen Sobeck; [Non-DoD Source] FW: Mexico: Ambassador Jacobson's meeting with Environment Minister Pacchiano: climate, vaquita, biological diversity, and more; [Non-DoD Source] Re: Pacchiano announces "assisted reproduction" of vaquita; RE: [Non-DoD Source] Call Request for Eileen Sobeck; Mabus Signed - Admiral Soberon Sanz - 14 Jun 2016.pdf; Mabus Signed - Admiral Soberon Sanz - 14 Jun 2016.pdf; RE: [Non-DoD Source] catching up on vaquita; RE: [Non-DoD Source] Connecting Nicole and John re: Vaquita Permitting issues; RE: [Non-DoD Source] Gortney contact / moving vaquita letter; RE: [Non-DoD Source] State department Point of Contact for Vaquita; Mabus Signed - Admiral Soberon Sanz - 14 Jun 2016.pdf; Mabus, Totoaba y Vaquita_141500may16.pdf; Mabus Signed - Admiral Soberon Sanz - 14 Jun 2016.pdf; Mabus, Totoaba y Vaquita_141500may16.pdf; RE: [Non-DoD Source] Touching base on vaquita assistance correspondence; RE: Pacchiano announces "assisted reproduction" of vaquita

(b)(5) [redacted]...

Sam

Samuel Dixon
Contractor - IBSS Corp
NMFS Assistant FOIA Liaison
(301) 427-8739
samuel.dixon@noaa.gov

---------- Forwarded message ----------
From: **NMFS HQ PR FOIA Requests - NOAA Service Account** <nmfs.hq.pr.foia@noaa.gov>
Date: Thu, May 25, 2017 at 1:37 PM
Subject: Fwd: FOIA Request Regarding Vaquitas
To: Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>, Steven Goodman - NOAA Federal <Steven.Goodman@noaa.gov>
Cc: Peaches Hodge-Tonic - NOAA Federal <peaches.hodge-tonic@noaa.gov>, NMFS HQ PR FOIA Requests - NOAA Service Account <nmfs.hq.pr.foia@noaa.gov>

Hi Sam and Steve

(b)(5) [redacted].

Thanks, Peaches

---------- Forwarded message ----------
From: **Pierson, John C CIV OASN (EI&E), ODASN (Environment)** <john.c.pierson@navy.mil>
Date: Thu, May 25, 2017 at 12:05 PM
Subject: FOIA Request Regarding Vaquitas
To: "NMFS.HQ.PR.FOIA@noaa.gov" <NMFS.HQ.PR.FOIA@noaa.gov>
Cc: "Vavra, Randy CDR OASN (EI&E), OAGC" <randy.vavra@navy.mil>

NMFS,

(b)(5) [redacted]

[redacted]

CDR Randy Vavra, Senior General Council, (703) 614-3137, is available if you have any questions.

John Pierson
Dir Marine Resources/Strategic Planning
1000 Navy Pentagon Room 4A674
Washington, D.C. 20350-1000
(703) 693-1785

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, May 25, 2017 1:50 PM
To: Lola Stith - NOAA Affiliate
Subject: Fwd: FOIA Request Regarding Vaquitas
Attachments: Vaquita -- FOIA Request.pdf; RE: [Non-DoD Source] Connecting Nicole and John re: Vaquita Permitting issues; ATT00003.bin; ATT00004.bin; ATT00005.bin; ATT00006.bin; ATT00007.bin; Mabus Signed - Admiral Soberon Sanz - 14 Jun 2016.pdf; Mabus Signed - Admiral Soberon Sanz - 14 Jun 2016.pdf; Mabus Signed - Admiral Soberon Sanz - 14 Jun 2016.pdf; RE: [Non-DoD Source] catching up on vaquita; ATT00012.bin; ATT00013.bin; ATT00014.bin; Mabus Signed - Admiral Soberon Sanz - 14 Jun 2016.pdf; Mabus, Totoaba y Vaquita_141500may16.pdf; Mabus Signed - Admiral Soberon Sanz - 14 Jun 2016.pdf; Mabus, Totoaba y Vaquita_141500may16.pdf; Mabus Signed - Admiral Soberon Sanz - 14 Jun 2016.pdf; Mabus, Totoaba y Vaquita_141500may16.pdf; RE: [Non-DoD Source] Touching base on vaquita assistance correspondence; ATT00022.bin

Has this been logged yet in FO, or have we not seen this yet?

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

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

---------- Forwarded message ----------
From: **Samuel Dixon** <samuel.dixon@noaa.gov>
Date: Thu, May 25, 2017 at 1:42 PM
Subject: Fwd: FOIA Request Regarding Vaquitas
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Steven Goodman - NOAA Federal <Steven.Goodman@noaa.gov>

(b)(5) [redacted] ...

Sam

Samuel Dixon
Contractor - IBSS Corp
NMFS Assistant FOIA Liaison
(301) 427-8739
samuel.dixon@noaa.gov

---------- Forwarded message ----------
From: **NMFS HQ PR FOIA Requests - NOAA Service Account** <nmfs.hq.pr.foia@noaa.gov>
Date: Thu, May 25, 2017 at 1:37 PM
Subject: Fwd: FOIA Request Regarding Vaquitas
To: Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>, Steven Goodman - NOAA Federal <Steven.Goodman@noaa.gov>
Cc: Peaches Hodge-Tonic - NOAA Federal <peaches.hodge-tonic@noaa.gov>, NMFS HQ PR FOIA Requests - NOAA Service Account <nmfs.hq.pr.foia@noaa.gov>

Hi Sam and Steve

(b)(5) [redacted].

Thanks, Peaches

---------- Forwarded message ----------
From: **Pierson, John C CIV OASN (EI&E), ODASN (Environment)** <john.c.pierson@navy.mil>
Date: Thu, May 25, 2017 at 12:05 PM
Subject: FOIA Request Regarding Vaquitas
To: "NMFS.HQ.PR.FOIA@noaa.gov" <NMFS.HQ.PR.FOIA@noaa.gov>
Cc: "Vavra, Randy CDR OASN (EI&E), OAGC" <randy.vavra@navy.mil>

NMFS,

(b)(5) [redacted]

[redacted]

CDR Randy Vavra, Senior General Council, (703) 614-3137, is available if you have any questions.

John Pierson
Dir Marine Resources/Strategic Planning
1000 Navy Pentagon Room 4A674
Washington, D.C. 20350-1000
(703) 693-1785

(b)(5) [redacted]

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Image not available for this document, ID: 0.7.3707.6450-000010

Image not available for this document, ID: 0.7.3707.6450-000011

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From: Mail Delivery Subsystem <mailer-daemon@googlemail.com>
Sent: Thursday, May 25, 2017 2:44 PM
To: mark.graff@noaa.gov
Subject: Delivery Status Notification (Failure)
Attachments: details.txt; Re: FOIA Assignment for DOC-NOAA-2017-001200

Message not delivered

There was a problem delivering your message to **foia@erulemaking.net**. See the technical details below.

LEARN MORE

The response was:

```
The recipient server did not accept our requests to connect. Learn more at
https://support.google.com/mail/answer/7720 [erulemaking.net 69.64.146.224: timed out]
```

Reporting-MTA: dns; googlemail.com
Arrival-Date: Mon, 22 May 2017 07:15:44 -0700 (PDT)
X-Original-Message-ID:
<CAFHw6A8LmnWgYui64byxALHUqE7AkQukLnpB2CKX+BwEmze1kQ@mail.gmail.com>

Final-Recipient: rfc822; foia@erulemaking.net
Action: failed
Status: 4.4.1
Diagnostic-Code: smtp; The recipient server did not accept our requests to connect. Learn more at
https://support.google.com/mail/answer/7720
[erulemaking.net 69.64.146.224: timed out]
Last-Attempt-Date: Thu, 25 May 2017 11:44:02 -0700 (PDT)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Mon, 22 May 2017 10:15:03 -0400
Subject: Re: FOIA Assignment for DOC-NOAA-2017-001200
To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Cc: foia@erulemaking.net, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Looking at the request, they will likely qualify for a fee waiver. Is there any basis you would see for not granting a fee waiver (which would moot the fee category determination)?

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 Fri, May 19, 2017 at 2:52 PM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

> What fee category does this requester belongs to?
>
>
>
> *From:* foia@regulations.gov [mailto:foia@regulations.gov]
> *Sent:* Friday, May 19, 2017 9:20 AM
> *To:* arlyn.penaranda@noaa.gov
> *Subject:* FOIA Assignment for DOC-NOAA-2017-001200
>
>
>
> You have been assigned to the FOIA request DOC-NOAA-2017-001200.
> Additional details for this request are as follows:
>
> - Assigned By: Samuel B. Dixon
> - Request Tracking Number: DOC-NOAA-2017-001200
> - Due Date: 06/16/2017
> - Requester: Meera Gajjar
> - Request Track: Simple
> - Short Description: N/A
> - Long Description: Please see attachment for full response Under the
> Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of
> information as detailed below on behalf of the National Whistleblower
> Center (NWC), a nonprofit organization focused on advocating for
> whistleblowers. 1. I am requesting any and all documents regarding the
> Lacey Act Reward Fund and/ or the Lacey Act Reward Account (hereinafter
> referred to as the “Lacey Act Reward Fund” or “Fund”). In particular, I am

> requesting: a. Any and all documents regarding the Fund's creation
> (including but not limited to the specific information that established the
> Fund as a lawful entity within the Department of Commerce and/ or the
> National Marine Fisheries Service. b. The Fund's annual budget (including
> all income, all expenses, and all payments for FY2012, FY2013, FY2014,
> FY2015, and FY2016). We request that all incoming funds and rewards paid,
> if applicable, be identified for each enforcement action. c. Any rules/
> regulations/ guidance documents regarding the administration of the Fund.
> d. A Copy of any internal report within the Department of Commerce that
> discusses the Fund. 2. I am also requesting any and all documents regarding
> NOAA's Asset Forfeiture Fund (hereinafter referred to as "AFF"). In
> particular, I am requesting: a. Any and all documents regarding the Fund's
> creation (including but not limited to the specific information that
> established the Fund as a lawful entity within the Department of Commerce
> and/ or the National Marine Fisheries Service. b. The Fund's annual budget
> (including all income, all expenses, and all payments for FY2012, FY2013,
> FY2014, FY2015, and FY2016). We request that all incoming funds and rewards
> paid, if applicable, be identified for each enforcement action. c. Any
> rules/ regulations/ guidance documents regarding the administration of the
> Fund. d. A Copy of any internal report within the Department of Commerce
> that
----- Message truncated -----

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 31, 2017 9:24 AM
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); Pamela Lawrence - NOAA Federal; John Almeida - NOAA Federal
Subject: Weekly FOIA Incoming and High Visibility Requests
Attachments: Weekly FOIA Incoming and High Visibility Requests 05.24.17 - 05.31.17.xls

Good Morning,

Attached is the weekly report.

Cause of Action has filed a new request, seeking all of the FOIA processing records, case file, administrative records, taskings, and other request-related records for the processing of their prior FOIA requests related to the NE Seamounts Monument designation (DOC-NOAA-2017-001275) (b)(5) [redacted].

NOAA also has recently been receiving a significant number of contract-related requests. Although not a significant litigation risk, the volume is noteworthy. This week alone NOAA received 10 such requests--this time from Riverside Technology Inc. This trend has been a burden on AGO who does not ordinarily handle this many requests.

There are no litigation updates.

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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Tracking Number	Type	Requester	Requester Organization	Submitted	Received
DOC-NOAA-2017-001285	Request	Jared S. Goodman	PETA Foundation	05/30/2017	05/31/2017
DOC-NOAA-2017-001282	Request	David Petersen		05/30/2017	05/30/2017
DOC-NOAA-2017-001279	Request	Jane Reldan	Seal Conservancy	05/27/2017	05/30/2017
DOC-NOAA-2017-001275	Request	MICHAEL PEPSON	Cause of Action	05/24/2017	05/24/2017
DOC-NOAA-2017-001267	Request	Raimundo Espinoza	Conservacion ConCiencia	05/23/2017	05/24/2017
DOC-NOAA-2017-001265	Request	Mirabai H. Galashan		05/23/2017	05/24/2017
DOC-NOAA-2017-001264	Request	Mirabai H. Galashan		05/23/2017	05/24/2017
DOC-NOAA-2017-001263	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017	05/24/2017
DOC-NOAA-2017-001262	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017	05/24/2017
DOC-NOAA-2017-001261	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017	05/24/2017
DOC-NOAA-2017-001260	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017	05/24/2017
DOC-NOAA-2017-001259	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017	05/24/2017
DOC-NOAA-2017-001258	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017	05/24/2017
DOC-NOAA-2017-001257	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017	05/24/2017
DOC-NOAA-2017-001256	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017	05/24/2017
DOC-NOAA-2017-001255	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017	05/24/2017
DOC-NOAA-2017-001254	Request	Laura E. Nielsen	Riverside Technology, inc.	05/23/2017	05/24/2017

Custom Report - 05/31/2017 08:

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
Samuel B. Dixon	Samuel B. Dixon	Yes	06/23/2017	TBD
Arlyn E. Penaranda	Arlyn E. Penaranda	Yes	07/07/2017	TBD
Kehaupuaokal Kamaka	Kehaupuaokal Kamaka	Yes	06/23/2017	TBD
Kehaupuaokal Kamaka	Kehaupuaokal Kamaka	Yes	06/23/2017	TBD
Lola Stith	Lola Stith	No	TBD	05/25/2017
Lola Stith	Lola Stith	No	TBD	05/25/2017
AGO	AGO	Yes	06/22/2017	TBD
Lola Stith	Lola Stith	No	TBD	05/24/2017
AGO	AGO	Yes	06/22/2017	TBD
Lola Stith	Lola Stith	No	TBD	05/24/2017
AGO	AGO	Yes	06/22/2017	TBD
Lola Stith	Lola Stith	No	TBD	05/24/2017
Lola Stith	Lola Stith	No	TBD	05/24/2017
AGO	AGO	Yes	06/22/2017	TBD

31:16

Status	Dispositions
Submitted	
Submitted	
Submitted	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Assignment Determination	
Closed	Other - Aggregate cases
Assignment Determination	
Closed	Other - Aggregate cases
Assignment Determination	
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Assignment Determination	

Detail

On behalf of People for the Ethical Treatment of Animals (PETA), and pursuant to the Freedom of Information Act,
This is a request under the Freedom of Information Act (5 U.S.C. 552). I request that a copy of the following docum
All correspondence (emails, letters, documents) dated between April 1, 2016 and May 27, 2017, composed or rece
Pursuant to the FOIA, CoA Institute hereby requests access to the following records for the time period of October
We could not find any investigation on the subject in 2016 but we have found an incident that looks like the informa
Transcript of NOAA public meeting September 8, 2016, 5:30-9:30 p.m. Kealakehe High School Cafeteria, 74-5000
Peer review and conflict of interest reports for Tyne, J. A., Pollock, K. H., Johnston, D. W., & Bejder, L. (2014)
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SC
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
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We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SC

I request copies of all records regarding Permit No. 774, issued to SeaWorld on October 7, 1992, to im
nent be provided to me: a list of every construction project completed with your agency in the last 20 yea
eived by the National Marine Fisheries Service, West Coast Region, in which "Children's Pool&quo
31, 2016 to the present: 1. The processing notes for CoA Institute's FOIA request dated October 31, 20
ation the requester is requesting for but it was reported in 2014 and received a Notice of Violation and As
Puohulihuli St., Kailua-Kona, HI 96740
). Abundance and Survival Rates of the Hawai'i Island Associated Spinner Dolphin (Stenella longirostris)
2CQ0021 Task Order 0006 awarded to I.M. Systems Group, Inc. (IMSG).
2CQ0021 Task Order 0005 awarded to I.M. Systems Group, Inc. (IMSG).
ITECH Contract DOCDG133E12CQ0021 Task Order 0003, Task Order 0005, AND Task Order 0006 av
2CQ0020 Task Order 0007 awarded to Earth Resources Technology, Inc. (ERT).
ITECH Contract DOCDG133E12CQ0020 Task Order 0007 AND Task Order 0008 awarded to Earth Res
0CQ0031 Task Order 0002 awarded to Science and Technology Corporation (STC).
ITECH Contract DOCDG133E10CQ0031 Task Order 0002 and Task Order 0008 awarded to Science ar
0CQ0034 Task Order 0006 awarded to Global Science and Technology, Inc.
0CQ0034 Task Order 0002 awarded to Global Science and Technology, Inc.
ITECH Contract DOCDG133E10CQ0034 Task Order 0004, Task Order 0002, AND Task Order 0006 av

port the orca Tilikum pursuant to the Marine Mammal Protection Act (MMPA), from July 7, 2014, to the
ırs (1997-2017). Please include the name of the contractor that worked on the project, and the amount c
t; appears in the correspondence.
016, tracking number DOC-NOAA-2017-000168, and the NOAA Tasker memorandum regarding or relat
ssessment in 2016. Requester confirmed that ":...2014 reported incident that was notified in 2016 is the

) Stock. PLoS ONE, 9(1), e86132. http://doi.org/10.1371/journal.pone.0086132. This SAPPHIRE researc

varded to I.M. Systems Group, Inc. (IMSG). ---------- W

sources Technology, Inc. (ERT). ---------- We are

nd Technology Corporation (STC). ---------- V

warded to Global Science and Technology, Inc. ----------

present, excepting correspondence between the agency and PETA, the Animal Welfare Institute, and th
of money spent. In order to help you determine my status for the purpose of assessing fees, you should l

ed to this request. 2. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tra
specific case I mention."

ch project sponsored by NOAA and captive dolphin corporation Dolphin Quest is cited in the draft EIS Er

e are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCD

requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133

We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOC

---------- We are requesting information under the Freedom of Information Act for NOAA SCITECH C

eir representatives. This request includes, but is not limited to, memoranda, reports, notes, letters, emai
know that I am an individual seeking information for personal use and not for a commercial use. I am wil

icking number DOC-NOAA-2017-000169, and the NOAA Tasker memorandum regarding or related to tl

nhancing protections for Hawaiian Spinner Dolphins http://www.cio.noaa.gov/services_programs/NOAA_

)G133E12CQ0021 Task Order 0003 awarded to I.M. Systems Group, Inc. (IMSG).

3E12CQ0020 Task Order 0008 awarded to Earth Resources Technology, Inc. (ERT).

:DG133E10CQ0031 Task Order 0008 awarded to Science and Technology Corporation (STC).

Contract DOCDG133E10CQ0034 Task Order 0004 awarded to Global Science and Technology, Inc.

ls, and other correspondence.
lling to pay the appropriate fees for this request up to a maximum of $30. If you estimate that the fees wi

his request. 3. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tracking r

_PRB_COI_Policy_110606.html accessed 10/21//16 "Requires Public Notice For peer reviews of informa

ill exceed this limit, please inform me first. I also include a telephone number at which I can be contacte

number DOC-NOAA-2017-000170, and the NOAA Tasker memorandum regarding or related to this req

ation subject to the OMB Bulletin, NOAA will disclose the names of the reviewers and their affiliation in a

d if necessary to discuss any aspect of my request.

uest. 4. All communications—including, but not limited to, e-mail,5 instant messaging, Google hangouts

report of findings and conclusions prepared by the peer reviewers. The report will be posted on the Dep

or Google chat messages, text messages, SMS messages, Blackberry messages, Skype messages, h

partment of Commerce Information Quality web site (http://www.osec.doc.gov/cio/oipr/info_qual.html). “

andwritten notes, or communications through any other media—between NOAA and the Office of the W

This link has been inoperable on repeated attempts to access it between 8/27/16 per NOAA_PRB_COI_

/hite House Counsel concerning or re

-

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 31, 2017 9:59 AM
To: Toland, Michael; FOIA, Electronic
Cc: Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate; Robert Hogan
Subject: BOU Weekly FOIA Report for DOC
Attachments: BOU Weekly FOIA Report 05.24.17 - 05.30.17.xls

Good Morning Mike,

Attached is this weeks report.

The comments within the spreadsheet are noteworthy--

2017-001285: The SeaWorld Orca permits on this Orca are of particular public interest following the "Blackfish" film, which documents the Orca Tilikum, whose permits are being sought.

2017-001279: News reports on the seal pupping season in La Jolla at the "Children's Pool" can be found here: http://www.sandiegouniontribune.com/news/environment/sd-me-childrens-pool-20161214-story.html.

2017-001275: Here, COA is seeking all FOIA processing notes, internal deliberations, case file histories, and the entire administrative record of their prior Seamounts National Monuments FOIA requests. (b)(5) [redacted]

2017-001267: (b)(5) [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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BOU Weekly FOIA Report
Wednesday 5/24-Tuesday 5/30

Tracking Number	Receive Requester	Requester Organization	Submitted
DOC-NOAA-2017-001285	05/31/20 Jared S. Goodman	PETA Foundation	05/30/2017
DOC-NOAA-2017-001279	05/30/20 Jane Reldan	Seal Conservancy	05/27/2017
DOC-NOAA-2017-001275	05/24/20 MICHAEL PEPSON	Cause of Action	05/24/2017
DOC-NOAA-2017-001267	05/24/20 Raimundo Espinoza	Conservacion ConCiencia	05/23/2017

Detail

On behalf of People for the Ethical Treatment of Animals (PETA), and pursuant to the Freedom of Information Act, I request copies of all records regarding Permit No. 774, issued to SeaWorld on October 7, 1992, to import the orca Tilikum pursuant to the Marine Mammal Protection Act (MMPA), from July 7, 2014, to the present, excepting correspondence between the agency and PETA, the Animal Welfare Institute, and their representatives. This request includes, but is not limited to, memoranda, reports, notes, letters, emails, and other correspondence.

All correspondence (emails, letters, documents) dated between April 1, 2016 and May 27, 2017, composed or received by the National Marine Fisheries Service, West Coast Region, in which "Children's Pool" appears in the correspondence.

Pursuant to the FOIA, CoA Institute hereby requests access to the following records for the time period of October 31, 2016 to the present: 1. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tracking number DOC-NOAA-2017-000168, and the NOAA Tasker memorandum regarding or related to this request. 2. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tracking number DOC-NOAA-2017-000169, and the NOAA Tasker memorandum regarding or related to this request. 3. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tracking number DOC-NOAA-2017-000170, and the NOAA Tasker memorandum regarding or related to this request. 4. All communications—including, but not limited to, e-mail,5 instant messaging, Google hangouts or Google chat messages, text messages, SMS messages, Blackberry messages, Skype messages, handwritten notes, or communications through any other media—between NOAA and the Office of the White House Counsel concerning or related to any of the above FOIA requests.

I'm writing in regards to a shark fin investigation originating in Puerto Rico where it's been reported that 54 shark fins were illegally transported to Florida during 2016. The information I'm requesting is any information regarding the case that can be made available without interfering with a successful prosecution or aren't confidential. Information requested included but isn't limited to: - Confirmed total number of fins seized - Shark species involved in case - Who are the indivuduals/company/companies being held responsible in the shark finning and transport? - Who and what penalties have been issued if any? (fines, etc) - Any other information available to the public Conservación ConCiencia is a Puerto Rico registered non-profit organization dedicated to environmental research and conservation that promotes sustainable development by working in collaboration with communities, NGOs, governments, academia and the private sector. Within the next year, we're planning on launching Puerto Rico's first comprehensive Shark research and conservation program. An integral component of the program is collaboration with the commercial fishing industry. The information regarding this case will aid us to gauge the status and size of the current illegal shark trade in Puerto Rico, in addition to assisting us avoid partners that are involved with illegal fishing practices. Additionally, any information on any other shark fin or shark trafficking case originating in Puerto Rico would also be appreciated.

Category	Comments
Public Interest/Special Interest	These SeaWorld Orca permits are of particular public interest following the blackfish film, which documents the orca Tilikum
Public Interest/Special Interest	News reports on the seal pupping season in La Jolla at the "Children's Pool" can be found here: http://www.sandiegouniontribune.com/news/environment/sd-me-childrens-pool-20161214-story.html
Legal	(b)(5) [redacted]
Public Interest/Special Interest	(b)(5) [redacted]

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 31, 2017 11:06 AM
To: Michelle Reed - NOAA Federal
Cc: Zachary Goldstein; Ed Kearns - NOAA Federal; David Layton; Shane Glass - NOAA Affiliate; Emily Ho - NOAA Affiliate
Subject: Re: Deadline: 3:00PM Wednesday, May 31, 2017 | LRM Request for Comment on OPEN Government Data Act (S760/SS-115-41)
Attachments: S. 760 mgh comments.docx

Hello Michelle,

Here is my review of S. 760 with two comments included. Thank you,

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 Fri, May 26, 2017 at 10:19 AM, Michelle Reed - NOAA Federal <michelle.reed@noaa.gov> wrote:

All:
Please review and provide comments (if you have any) to me for OCIO coordination by Noon, Wednesday, May 31.
Thanks,
Michelle

Michelle Reed
Chief of Staff
Office of the Chief Information Officer
Main Office: (301) 713-9600
Direct: (301) 628-5725
Mobile (b)(6) [redacted]

---------- Forwarded message ----------
From: **Velna Bullock - NOAA Federal** <velna.l.bullock@noaa.gov>
Date: Fri, May 26, 2017 at 9:26 AM
Subject: Fwd: Deadline: 3:00PM Wednesday, May 31, 2017 | LRM Request for Comment on OPEN Government Data Act (S760/SS-115-41)
To: _HDQ OLA NOAA <OLA.NOAA@noaa.gov>, Kristen Gustafson - NOAA Federal <kristen.l.gustafson@noaa.gov>, Glenn Tallia - NOAA Federal <Glenn.E.Tallia@noaa.gov>, Janice Sessing <Janice.Sessing@noaa.gov>, NOS.Policy@noaa.gov, Chad Wagner - NOAA Federal <chad.wagner@noaa.gov>, Chief of Staff OMAO - NOAA Service Account <OMAO.COS@noaa.gov>, Edward Horton - NOAA Federal <edward.horton@noaa.gov>, David Price - NOAA Federal <david.g.price@noaa.gov>, Elizabeth McLanahan <elizabeth.mclanahan@noaa.gov>, Gregory Raymond - NOAA Federal <gregory.raymond@noaa.gov>, Brianne Smith - NOAA Federal <Brianne.Smith@noaa.gov>, Merriam Norris <Merriam.Norris@noaa.gov>, Becky Lizama - NOAA Federal <becky.lizama@noaa.gov>, Eric Myers - NOAA Federal <eric.myers@noaa.gov>, Jessica Kondel <jessica.kondel@noaa.gov>, Micah Effron - NOAA Federal <micah.effron@noaa.gov>, Michelle Reed <michelle.reed@noaa.gov>, nesdis.cfocao.management@noaa.gov, nesdis.executive.affairs@noaa.gov, _NWS Congressional Affairs Unknown <nws.congressionalaffairs@noaa.gov>, Peter Oppenheimer <peter.oppenheimer@noaa.gov>, Samantha Guidon - NOAA Affiliate <samantha.guidon@noaa.gov>, Hannah Mellman - NOAA Federal <hannah.mellman@noaa.gov>, Adam Dilts - NOAA Federal <adam.dilts@noaa.gov>, Kenneth Bailey - NOAA Federal <kenneth.bailey@noaa.gov>, Stephanie Altman - NOAA Federal <stephanie.altman@noaa.gov>, Zachary Goldstein - NOAA Federal <zachary.goldstein@noaa.gov>

LEGISLATIVE REFERRAL MEMORANDUM

S760

LRM SS-115-41

DEADLINE: 3:00PM Wednesday, May 31, 2017

(b)(5) [redacted]

[redacted]

(b)(5) [redacted]

[redacted]

[redacted]

As a reminder, materials circulated by this office are deliberative and pre-decisional and may not be shared or discussed with anyone outside of the Executive Branch.

Thank you,

Velna

Image not available for this document, ID: 0.7.3707.6470-000001

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 31, 2017 11:07 AM
To: Dennis Morgan - NOAA Federal; Lola Stith - NOAA Affiliate
Cc: Robert Swisher - NOAA Federal
Subject: Fwd: Deadline: 3:00PM Wednesday, May 31, 2017 | LRM Request for Comment on OPEN Government Data Act (S760/SS-115-41)
Attachments: S. 760 mgh comments.docx

For data call tracking--I responded to this below.

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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---------- Forwarded message ----------
From: **Mark Graff - NOAA Federal** <mark.graff@noaa.gov>
Date: Wed, May 31, 2017 at 11:06 AM
Subject: Re: Deadline: 3:00PM Wednesday, May 31, 2017 | LRM Request for Comment on OPEN Government Data Act (S760/SS-115-41)
To: Michelle Reed - NOAA Federal <michelle.reed@noaa.gov>
Cc: Zachary Goldstein <zachary.goldstein@noaa.gov>, Ed Kearns - NOAA Federal <ed.kearns@noaa.gov>, David Layton <David.Layton@noaa.gov>, Shane Glass - NOAA Affiliate <shane.glass@noaa.gov>, Emily Ho - NOAA Affiliate <emily.s.ho@noaa.gov>

Hello Michelle,

Here is my review of S. 760 with two comments included. Thank you,

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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All:
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Thanks,
Michelle

Michelle Reed
Chief of Staff
Office of the Chief Information Officer
Main Office: (301) 713-9600
Direct: (301) 628-5725
Mobile (b)(6) [redacted]

---------- Forwarded message ----------
From: **Velna Bullock - NOAA Federal** <velna.l.bullock@noaa.gov>
Date: Fri, May 26, 2017 at 9:26 AM
Subject: Fwd: Deadline: 3:00PM Wednesday, May 31, 2017 | LRM Request for Comment on OPEN Government Data Act (S760/SS-115-41)
To: _HDQ OLA NOAA <OLA.NOAA@noaa.gov>, Kristen Gustafson - NOAA Federal <kristen.l.gustafson@noaa.gov>, Glenn Tallia - NOAA Federal <Glenn.E.Tallia@noaa.gov>, Janice Sessing <Janice.Sessing@noaa.gov>, NOS.Policy@noaa.gov, Chad Wagner - NOAA Federal <chad.wagner@noaa.gov>, Chief of Staff OMAO - NOAA Service Account <OMAO.COS@noaa.gov>, Edward Horton - NOAA Federal <edward.horton@noaa.gov>, David Price - NOAA Federal <david.g.price@noaa.gov>, Elizabeth McLanahan <elizabeth.mclanahan@noaa.gov>, Gregory Raymond - NOAA Federal <gregory.raymond@noaa.gov>, Brianne Smith - NOAA Federal <Brianne.Smith@noaa.gov>, Merriam Norris <Merriam.Norris@noaa.gov>, Becky Lizama - NOAA Federal <becky.lizama@noaa.gov>, Eric Myers - NOAA Federal <eric.myers@noaa.gov>, Jessica Kondel <jessica.kondel@noaa.gov>, Micah Effron - NOAA Federal <micah.effron@noaa.gov>, Michelle Reed <michelle.reed@noaa.gov>, nesdis.cfocao.management@noaa.gov, nesdis.executive.affairs@noaa.gov, _NWS Congressional Affairs Unknown <nws.congressionalaffairs@noaa.gov>, Peter Oppenheimer <peter.oppenheimer@noaa.gov>, Samantha Guidon - NOAA Affiliate <samantha.guidon@noaa.gov>, Hannah Mellman - NOAA Federal <hannah.mellman@noaa.gov>, Adam Dilts - NOAA Federal <adam.dilts@noaa.gov>, Kenneth Bailey - NOAA Federal <kenneth.bailey@noaa.gov>, Stephanie Altman - NOAA Federal <stephanie.altman@noaa.gov>, Zachary Goldstein - NOAA Federal <zachary.goldstein@noaa.gov>

LEGISLATIVE REFERRAL MEMORANDUM

S760

LRM SS-115-41

DEADLINE: 3:00PM Wednesday, May 31, 2017

(b)(5) [redacted]

[redacted]

[redacted]

(b)(6) [redacted]

As a reminder, materials circulated by this office are deliberative and pre-decisional and may not be shared or discussed with anyone outside of the Executive Branch.

Thank you,

Velna

Image not available for this document, ID: 0.7.3707.6473-000001

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 31, 2017 12:10 PM
To: Dennis Morgan - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Fwd: BOU Weekly FOIA Report for DOC
Attachments: BOU Weekly FOIA Report 05.24.17 - 05.30.17.xls

This would also be a recurring data call now, which DOC has asked we submit each week. My response is below.

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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---------- Forwarded message ----------
From: **Mark Graff - NOAA Federal** <mark.graff@noaa.gov>
Date: Wed, May 31, 2017 at 9:59 AM
Subject: BOU Weekly FOIA Report for DOC
To: "Toland, Michael" <mtoland@doc.gov>, "FOIA, Electronic" <EFOIA@doc.gov>
Cc: Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Robert Hogan <robert.j.hogan@noaa.gov>

Good Morning Mike,

Attached is this weeks report.

The comments within the spreadsheet are noteworthy--

2017-001285: The SeaWorld Orca permits on this Orca are of particular public interest following the "Blackfish" film, which documents the Orca Tilikum, whose permits are being sought.

2017-001279: News reports on the seal pupping season in La Jolla at the "Children's Pool" can be found here: http://www.sandiegouniontribune.com/news/environment/sd-me-childrens-pool-20161214-story.html.

2017-001275: Here, COA is seeking all FOIA processing notes, internal deliberations, case file histories, and the entire administrative record of their prior Seamounts National Monuments FOIA requests. (b)(5) [redacted]

2017-001267: (b)(5) [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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BOU Weekly FOIA Report
Wednesday 5/24-Tuesday 5/30

Tracking Number	Receive Requester	Requester Organization	Submitted
DOC-NOAA-2017-001285	05/31/20 Jared S. Goodman	PETA Foundation	05/30/2017
DOC-NOAA-2017-001279	05/30/20 Jane Reldan	Seal Conservancy	05/27/2017
DOC-NOAA-2017-001275	05/24/20 MICHAEL PEPSON	Cause of Action	05/24/2017
DOC-NOAA-2017-001267	05/24/20 Raimundo Espinoza	Conservacion ConCiencia	05/23/2017

Detail

On behalf of People for the Ethical Treatment of Animals (PETA), and pursuant to the Freedom of Information Act, I request copies of all records regarding Permit No. 774, issued to SeaWorld on October 7, 1992, to import the orca Tilikum pursuant to the Marine Mammal Protection Act (MMPA), from July 7, 2014, to the present, excepting correspondence between the agency and PETA, the Animal Welfare Institute, and their representatives. This request includes, but is not limited to, memoranda, reports, notes, letters, emails, and other correspondence.

All correspondence (emails, letters, documents) dated between April 1, 2016 and May 27, 2017, composed or received by the National Marine Fisheries Service, West Coast Region, in which "Children's Pool" appears in the correspondence.

Pursuant to the FOIA, CoA Institute hereby requests access to the following records for the time period of October 31, 2016 to the present: 1. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tracking number DOC-NOAA-2017-000168, and the NOAA Tasker memorandum regarding or related to this request. 2. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tracking number DOC-NOAA-2017-000169, and the NOAA Tasker memorandum regarding or related to this request. 3. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tracking number DOC-NOAA-2017-000170, and the NOAA Tasker memorandum regarding or related to this request. 4. All communications—including, but not limited to, e-mail,5 instant messaging, Google hangouts or Google chat messages, text messages, SMS messages, Blackberry messages, Skype messages, handwritten notes, or communications through any other media—between NOAA and the Office of the White House Counsel concerning or related to any of the above FOIA requests.

I'm writing in regards to a shark fin investigation originating in Puerto Rico where it's been reported that 54 shark fins were illegally transported to Florida during 2016. The information I'm requesting is any information regarding the case that can be made available without interfering with a successful prosecution or aren't confidential. Information requested included but isn't limited to: - Confirmed total number of fins seized - Shark species involved in case - Who are the indivuduals/company/companies being held responsible in the shark finning and transport? - Who and what penalties have been issued if any? (fines, etc) - Any other information available to the public Conservación ConCiencia is a Puerto Rico registered non-profit organization dedicated to environmental research and conservation that promotes sustainable development by working in collaboration with communities, NGOs, governments, academia and the private sector. Within the next year, we're planning on launching Puerto Rico's first comprehensive Shark research and conservation program. An integral component of the program is collaboration with the commercial fishing industry. The information regarding this case will aid us to gauge the status and size of the current illegal shark trade in Puerto Rico, in addition to assisting us avoid partners that are involved with illegal fishing practices. Additionally, any information on any other shark fin or shark trafficking case originating in Puerto Rico would also be appreciated.

Category	Comments
Public Interest/Special Interest	These SeaWorld Orca permits are of particular public interest following the blackfish film, which documents the orca Tilikum
Public Interest/Special Interest	News reports on the seal pupping season in La Jolla at the "Children's Pool" can be found here: http://www.sandiegouniontribune.com/news/environment/sd-me-childrens-pool-20161214-story.html
Legal	(b)(5) [redacted]
Public Interest/Special Interest	(b)(5) [redacted]

From: Beverly Smith - NOAA Federal <beverly.smith@noaa.gov>
Sent: Wednesday, May 31, 2017 2:34 PM
To: Steven Goodman - NOAA Federal; Mark Graff - NOAA Federal
Cc: Beverly Smith; Samuel Dixon - NOAA Affiliate
Subject: DOC-NOAA-2015-000295 Barnes - NMFS/NOAA Release Approval - Please Expedite
Attachments: 2015-000295 13th Response Letter.FO.pdf; 2015-000295 concurrence clearance 13th response.FO.pdf; Generic_tasker_13th interim response.pdf

Steven and Mark,

(b)(5) [redacted].

--
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

MAY 31 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.

This is a 13th interim response of **352 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, 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

FOIA REQUEST #: DOC-NOAA-2015-000295
NAME: BARNES
RELEASE: 13TH INTERIM RESPONSE

CONCURRENCE CLEARANCE:

Date	Signature	Office
05/17/2017	Beverly J Smith	FOIA
05/25/2017	See attached GCSE e-clearance	GCSE
5/31/17	Atwell	DIRECTORATE
5/31/17	RG C	DIRECTORATE

Hoffman Releasables from Nonreleasable Batch

Beverly Smith - NOAA Federal <beverly.smith@noaa.gov>

FOIA Task Completed for DOC-NOAA-2015-000295

foia@regulations.gov <foia@regulations.gov> Thu, May 25, 2017 at 4:11 PM
To: "nmfs.sero.foia1@noaa.gov" <nmfs.sero.foia1@noaa.gov>, "stephen.chappell@noaa.gov" <stephen.chappell@noaa.gov>

The FOIA Task for DOC-NOAA-2015-000295 was completed. Additional details for this task are as follows:

Task Details:

- Tracking Number: DOC-NOAA-2015-000295
- Task Type: Request Detail
- Outcome: Other
- Task Description: Please Expedite. Please provide legal review/clearance of IBSS contractor reviewed records labeled Hoffman nonreleasable located in GCSE FOIA P Drive: 2015-000295 Barnes/Hoffman nonreleasable....
- Task Comments: Records labeled Hoffman nonreleasable located in GCSE FOIA P Drive: 2015-000295 Barnes/Hoffman nonreleasable have been reviewed by GC and are cleared for release as currently redacted.
- Assigned To: Shepherd R. Grimes
- Assigned By: Stephen Chappell
- Date Sent: 05/17/2017
- Due Date: 05/19/2017
- Closed Date: 05/25/2017

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 _____.

[X] 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. **13th interim response, 352 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.

[X] 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)

[X] 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: 2017.05.31 14:19:54 -04'00'

_____ _____
FOIA Coordinator Date

See attached concurrence clearance 5/31/2017

_____ _____
Signature (Senior Official) Date

From: FOIA Office - NOAA Service Account <foia@noaa.gov>
Sent: Wednesday, May 31, 2017 3:41 PM
To: Mark Graff - NOAA Federal
Subject: Fwd: Fee Waiver Supplemental Information Needed
Attachments: 2017.03.20 NOAA Website FOIA.pdf; 2017.03.22 Expedited Processing Determination (NOAA Website).docx; 2017.05.17 Fee Waiver Clarification Request.pdf; 5017.05.31 FOIAonline Screenshot.pdf

FYI

---------- Forwarded message ----------
From: **Madalyn Brown** <madbrown@edf.org>
Date: Wed, May 31, 2017 at 3:17 PM
Subject: Re: Fee Waiver Supplemental Information Needed
To: "foia@noaa.gov" <foia@noaa.gov>

Dear Mr. Graff,

On May 17, 2017, you requested supplemental information about the fee waiver for Environmental Defense Fund's (EDF) FOIA request DOC-NOAA-2017-000844. After reviewing your request, EDF respectfully requests NOAA's position on the agency's authority to assess a fee for this request.

Per 5 U.S.C. §552(a)(4)(A)(viii)(I), an agency shall not assess any fees if the agency has failed to comply with any time limit under 5 U.S.C. §552(a)(6), which states that each agency shall "determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request. . ." 5 U.S.C. §552(a)(6)(A)(i).

NOAA has not met that 20-day statutory deadline. The history of this request and the communication between Ben Levitan of EDF and NOAA is as follows (please see attached for the relevant documents):

- Ben Levitan submitted the FOIA request on March 20, 2017. EDF requested expedited processing and a fee waiver.

- On March 22, 2017, NOAA denied expedited processing. This correspondence did not address the fee waiver, nor did it notify EDF of any determination whether to comply with our FOIA request.

- On April 17, 2017, NOAA's 20-day deadline elapsed.

- NOAA did not contact EDF again until May 17, 2017, when you emailed Ben Levitan to request additional information relating to EDF's request for a fee waiver.

Far more than 20 working days passed between the submission of EDF's FOIA request and NOAA's request for additional information. In addition, NOAA's request arrived fully two weeks after the May 3, 2017 "Estimated Date of Completion" on FOIAonline for the entire FOIA request. EDF has yet to receive any indication that NOAA intends to fulfill or deny the request.

In light of the information above, please confirm whether NOAA believes that it is entitled to collect fees for this request. If you have questions regarding this email, please contact me by phone (303) 447-7218 or by email at madbrown@edf.org.

Respectfully submitted,

Madalyn Brown

Madalyn Brown

Legal Intern

U.S. Climate Legal & Regulatory Advocacy

Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302
T 303-447-7218
madbrown@edf.org

This e-mail and any attachments may contain confidential and privileged information. If you are not the intended recipient, please notify the sender immediately by return e-mail, delete this e-mail and destroy any copies. Any dissemination or use of this information by a person other than the intended recipient is unauthorized and may be illegal.

March 20, 2017

SUBMITTED ELECTRONICALLY
HARD COPY TO FOLLOW BY U.S. MAIL

National Freedom of Information Officer
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, MD 20910

Re: Freedom of Information Act Request for Records Related to National Oceanic and Atmospheric Administration Websites

Dear National Freedom of Information Officer:

Environmental Defense Fund ("EDF") respectfully requests records, as that term is defined at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act ("FOIA"), of the National Oceanic and Atmospheric Administration (the "Agency"). Specifically, EDF requests:

1) a copy of all Agency records related to climate change, including any information that pertains to monitoring or addressing climate change, that appeared on the Agency's websites on January 19, 2017 but no longer appear, or were modified, as of January 20, 2017 or any date thereafter. This request encompasses, but is not limited to, web pages, databases, and any records accessible through the Agency's websites via hyperlink or other means, including web pages linking to climate and air quality information on White House or other federal agency websites; and
2) correspondence related to the content of the Agency's websites, including prospective future changes to such content, sent or received by any political appointee or member of the beachhead or transition team.

This request specifically excludes changes to font style, where the text remains unchanged; the addition of new press releases, blog posts, or social media posts; changes to names, biographies, or contact information of Agency staff; and updates to databases to the extent such updates were made pursuant to policies that were effective as of January 19, 2017.

For both elements of this request, EDF respectfully seeks records produced, modified, or transmitted since November 8, 2016 that exist as of the date of this request and on a rolling basis

going forward. "Correspondence" includes, but is not limited to, hard copy correspondence and electronic correspondence such as emails, text messages, and correspondence transmitted through any other electronic platform.

Request for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f)(1)(iii) and (iv), EDF respectfully seeks expedited processing because this request involved "[a] matter of widespread and exceptional media interest involving questions about the Government's integrity which affect public confidence" and "[a]n urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information." In support of this request, I certify that the following statement is true and correct to the best of my knowledge and belief:

1. EDF engages in extensive, daily efforts to inform the public about matters affecting environmental policy. For example, EDF has multiple channels for distributing information to the public, including through direct communication with more than 2 million members, press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets. *See* Peter Zalzal, *In Early Action, EPA Administrator Pruitt Moves to Block Communities' Right to Know about Oil and Gas Pollution*, EDF Climate 411 Blog (Mar. 7, 2017), http://blogs.edf.org/climate411/2017/03/07/in-early-action-epa-administrator-pruitt-moves-to-block-communities-right-to-know-about-oil-and-gas-pollution/; Scott Weaver, *Scott Pruitt's Misleading Senate Testimony – Will Alternative Science Replace Real Science at EPA?*, EDF Climate 411 Blog (Feb. 8, 2017), http://blogs.edf.org/climate411/2017/02/08/scott-pruitts-misleading-senate-testimony-will-alternative-science-replace-real-science-at-epa/. With respect to another FOIA request, the U.S. Environmental Protection Agency recently recognized EDF's eligibility for expedited processing under an analogous FOIA provision.

2. Since January 20, 2017, changes to websites of federal agencies—especially scientific agencies—have been a matter of significant public concern. *See, e.g.*, Emily Atkin, *The EPA's Science Office Removed "Science" from Its Mission Statement*, New Republic (Mar. 7, 2017), https://newrepublic.com/article/141174/epas-science-office-removed-science-mission-statement. Changes that have been effected and anticipated have resulted in rapid, tangible public responses. *See, e.g.*, Amy Harmon, *Activists Rush to Save Government Science Data – If They Can Find It*, N.Y. Times (Mar. 6, 2017), https://www.nytimes.com/2017/03/06/science/donald-trump-data-rescue-science.html.

3. Due to the deep, demonstrated concern by the public about changes to the federal agencies' websites, it is imperative that the public understand the process for making those changes. It is particularly salient whether politically appointed officials or transition/beachhead team members were involved. The requested records could immediately influence how concerned members of the public select priorities and allocate resources as they seek to identify website changes and preserve current or recent information available through Agency websites. Without expedited processing, information of considerable public value may be irretrievably lost, or policies regarding

such information may be deeply entrenched, before the public has the knowledge or opportunity to engage.

Request for Fee Waiver

As a non-partisan, non-profit organization that provides information that is in the public interest, EDF respectfully requests a waiver of fees associated with this request. We are not seeking information for any commercial purpose and the records received will contribute to a greater public understanding of issues of considerable public interest: the public availability of information provided on the website of a major federal agency. 5 U.S.C. § 552(a)(4)(A)(iii). EDF is well positioned to disseminate the records to the public, as we routinely issue press releases, action alerts, reports, analyses, and other public outreach materials. We fully intend to disseminate newsworthy information received in response to this request. Accordingly, we respectfully request that the documents be furnished without charge.

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event EDF's request for a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at (202) 572-3318 or by email at blevitan@edf.org.

Respectfully submitted,

Benjamin Levitan
Environmental Defense Fund
1875 Connecticut Avenue, NW
Suite 600
Washington, DC 20009

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

Via FOIAonline

March 22, 2017

Attn: Benjamin Levitan
Environmental Defense Fund
1875 Connecticut Ave, NW, Suite 600
Washington, DC 20009

Re: FOIA Request No. DOC-NOAA-2017-000844

Dear Mr./Ms. Levitan:

This letter is in regards to your Freedom of Information Act (FOIA) request entered into FOIAonline on March 20, 2017, in which you requested records as follows:

> 1) a copy of all Agency records related to climate change, including any information that pertains to monitoring or addressing climate change, that appeared on the Agency's websites on January 19, 2017 but no longer appear, or were modified, as of January 20, 2017 or any date thereafter. This request encompasses, but is not limited to, web pages, databases, and any records accessible through the Agency's websites via hyperlink or other means, including web pages linking to climate and air quality information on White House or other federal agency websites; and
> 2) correspondence related to the content of the Agency's websites, including prospective future changes to such content, sent or received by any political appointee or member of the beachhead or transition team.

You requested expedited review as specified by the FOIA, indicating that there is an urgency to inform the public regarding the content of agency websites and correspondence with the White House transition team.

You have not satisfied the justifications for FOIA request expedited processing in 15 CFR 4.6(e)(i-iv). You have indicated there is an urgency to inform the public. However, you have failed to establish your eligibility as a "News Media" requester as would be necessary for expedited treatment under 15 CFR 4.6(e), and you have failed to identify the urgency to inform the public, where several other requests, which are currently being processed, are seeking similar records and are in front of your current request in the queue. Without further justification to expedite processing in satisfaction of the applicable regulations, ordinary processing is appropriate.

You have the right to appeal this denial of the Expedited Processing request. 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, 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.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers mediation services to FOIA requesters. They may be contacted in any of the following ways:
Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov

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

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

Sincerely,

/S/

Mr. Mark Graff
NOAA FOIA Officer

DEPARTMENT OF COMMERCE
UNITED STATES OF AMERICA

Benjamin Levitan

From: foia@noaa.gov
Sent: Wednesday, May 17, 2017 9:40 AM
To: Benjamin Levitan
Subject: Fee Waiver Supplemental Information Needed

05/17/2017 09:23 AM
FOIA Request: DOC-NOAA-2017-000844

In reviewing your request for a fee waiver, additional information is needed to complete the adjudication. Specifically, your request seeks a very broad set of records, including all records related to Climate Change. Considering the vast volumes of records that exist on the topic, hundreds of thousands of pages of records on the topic are already publicly available, and production of those records would not significantly increase the public's understanding.

Similarly, you have not outlined the audience that would receive the intended dissemination by EDF, nor have you indicated the method of disseminating the records to increase the segment of interested individuals that would benefit from the disclosure.

Lastly, your request--seeking all records about climate change--would include enormous valumes of innocuous records of no public interest, including cc's, scheduling invitations, forwarded communications, near duplicates, calendar reminders, return receipts, and other non-substantive communications that would have no value in significantly increasing the public's understanding.

Please outline how these records would qualify for the fee waiver you have requested by supplementing your fee waiver request to explain your eligibility under 15 CFR 4.11 despite the deficiencies listed above. Your request will be tolled pending your response.

Mark Graff

NOAA FOIA Officer

Request Details

Tracking Number : *DOC-NOAA-2017-000844*

Submitted Evaluation Assignment Processing Closed

Contact Information

Full Name : Mr. Benjamin Levitan
Organization : Environmental Defense Fund
Email Address : blevitan@edf.org
Phone Number : 202-572-3318
Fax Number :

Mailing Location : United States/U.S. Territories
Address Line 1 : 1875 Connecticut Avenue, NW
Address Line 2 : Suite 600
City : Washington
State/Province : District of Columbia
Zip Code/Postal Code : 20009

Request Information

Agency : Office of Communications and External Affairs
Will Pay Up To : $0.00
Date Submitted : 03/20/2017
Estimated Date of Completion : 05/03/2017

Request Phase : Assignment
Request Track : Simple
Final Disposition : Undetermined

Description :

778/2000

1) a copy of all Agency records related to climate change, including any information that pertains to monitoring or addressing climate change, that appeared on the Agency's websites on January 19, 2017 but no longer appear, or were modified, as of January 20, 2017 or any date thereafter. This request encompasses, but is not limited to, web pages, databases, and any records accessible through the Agency's websites via hyperlink or other means, including web pages linking to climate and air quality information on White

Request a Fee Waiver

Made Request ? Yes

As a non-partisan, non-profit organization that provides information that is in the public interest, EDF respectfully requests a waiver of fees associated with this request. We are not seeking information for any commercial

Request Expedited Handling

Made Request ? Yes

Please refer to our attached FOIA request.

Supporting Files

Attached Files :

Attached File	Type	Size (MB)
NOAA Website FOIA.pdf	PDF	0.09

Payments

No payments to display.

Invoice

Total Amount Billed : $0.00
Date Sent :
No invoice has been added.

Correspondence with Requester

Subject	From	Date	Detail
Fee Waiver Supplemental Information Needed	Mark Graff	2017-05-17	

05/17/2017 09:23 AM
FOIA Request: DOC-NOAA-2017-000844

In reviewing your request for a fee waiver, additional information is needed to complete the adjudication. Specifically, your request seeks a very broad set of records, including all records related to Climate Change. Considering the vast volumes of records that exist on the topic, hundreds of thousands of pages of records on the topic are already publicly available, and production of those records would not significantly increase the public's understanding.

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Please outline how these records would qualify for the fee waiver you have requested by supplementing your fee waiver request to explain your eligibility under 15 CFR 4.11 despite the deficiencies listed above. Your request will be tolled pending your response.

Mark Graff

NOAA FOIA Officer

Reply

FOIA Expedited Processing Disposition Reached for DOC-NOAA-2017-000844		2017-03-22	
Expedited Processing Determination	Mark Graff	2017-03-22	
FOIA Request DOC-NOAA-2017-000844 Submitted		2017-03-20	

Released Records

No records have been released.

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 31, 2017 3:56 PM
To: Glenn Tallia - NOAA Federal; Heather Book - NOAA Federal; Hillary Davidson; Kristen Gustafson - NOAA Federal; Matthew Womble - NOAA Affiliate; Rodney Vieira - NOAA Federal; Rose Stanley - NOAA Federal; Russell Vose - NOAA Federal; Ruth Ann Lowery - NOAA Federal; Tim Owen - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: Karl-related FOIA requests
Attachments: Karl-related requests extraction 5.31.xls

Good Afternoon,

Attached is the spreadsheet for the 4:00 call.

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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(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 31, 2017 3:06 PM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Task for DOC-OS-2017-000859 and DOC-OS-2017-001158 (Review/Signature)
Attachments: NOAA RESPONSE_2017-000859 Fee Est - All Other Requester 4-28-2017 mhg signed.pdf; NOAA RESPONSE_2017-001158 Fee Est - All Other Requester 5-15-2017 mhg signed.pdf

(b)(5) [redacted] --attached. Thanks!

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 Wed, May 31, 2017 at 2:55 PM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Mark,

(b)(5) [redacted]

[redacted]. Let me know if you have questions.

Thanks!

---------- Forwarded message ----------
From: **Velna Bullock - NOAA Federal** <velna.l.bullock@noaa.gov>
Date: Fri, May 19, 2017 at 10:32 AM
Subject: Fwd: Scanned from a Xerox Multifunction Printer
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

---------- Forwarded message ----------
From: <DOCScanner@docgov.onmicrosoft.com>
Date: Fri, May 19, 2017 at 10:34 AM
Subject: Scanned from a Xerox Multifunction Printer
To: "velna.l.bullock@noaa.gov" <velna.l.bullock@noaa.gov>

Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Printer.

Attachment File Type: pdf, Multi-Page

Multifunction Printer Location: Room 60015 East
Device Name: XRX9C934E85BD77

For more information on Xerox products and solutions, please visit http://www.xerox.com

--
Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [redacted]
lola.m.stith@noaa.gov

UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

April 28, 2017

MEMORANDUM FOR:

Bobbie Parsons, IOS
Pamela Moulder, ESA
Stephen Kong, EDA
Victor Powers, ITA
Catherine Fletcher, NIST
Stacy Cheney, NTIA
Jennifer Piel, OIG
Laura Main, OIG
Wayne Curry, Cen
Dondi Staunton, BEA
Jennifer Kuo, BIS
Josephine Arnold, MBDA
Wayne Strickland, NTIS
Mark H. Graff, NOAA
Ricou Heaton, PTO

FROM:

Michael, Toland, Ph.D.
Deputy Chief FOIA Officer
Office of Privacy and Open Government

SUBJECT: Fee Estimate for FOIA Tracking No. DOC-OS-2017-000859

The Department has received the attached Freedom of Information Act (FOIA) request from Josh Loewenstein. The FOIA requester is in the "All Other Requesters" category. The chargeable services for "All Other Requesters" are search and duplication.

Please provide the search, and duplication estimate with respect to the responsive documents located within your office. **DO NOT SEARCH YET**. Rather, we need an **ESTIMATE** from you as to how many pages you may locate for this request. **This is only a good faith estimate; you should not search in order to come up with the estimate**. Also, a search need not actually find documents in order to be chargeable, so long as, at the outset, there is a reasonable likelihood that there may be responsive documents, and the search is conducted with due diligence.

Please provide the following estimates:
Please fill in the following information and return this sheet to: Harriette Boyd, FOIA Specialist, Office of Privacy and Open Government, Room 52010 HCHB, hboyd1@doc.gov by C.O.B. May 5, 2017.

Computer Search
Total **estimated** cost for duplication in electronic version (cost of disc or CD). ____N/A_____
Total **estimated** hours of time to provide electronic version. _2.5_____
Total **estimated** dollar amount for time to provide electronic version. ___$145_____

Manual Search
Total **estimated** number of pages of documents. __N/A_____
Total **estimated** hours for search. _N/A_____
Total **estimated** dollar amount for search. __N/A_____

This information is needed to compute a final estimated cost.

GRAFF.MARK.HYRUM.1514447892_____ Digitally signed by GRAFF.MARK.HYRUM.1514447892 DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892 Date: 2017.05.31 15:04:20 -04'00'

Signature/Date

___NOAA_____
Bureau

Attachment

UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

May 15, 2017

MEMORANDUM FOR:

Bobbie Parsons, IOS
Pamela Moulder, ESA
Stephen Kong, EDA
Victor Powers, ITA
Catherine Fletcher, NIST
Stacy Cheney, NTIA
Jennifer Piel, OIG
Laura Main, OIG
Wayne Curry, Cen
Dondi Staunton, BEA
Jennifer Kuo, BIS
Josephine Arnold, MBDA
Wayne Strickland, NTIS
Mark H. Graff, NOAA
Ricou Heaton, PTO

FROM: Michael, Toland, Ph.D.
Deputy Chief FOIA Officer
Office of Privacy and Open Government

SUBJECT: Fee Estimate for FOIA Tracking No. DOC-OS-2017-001158

The Department has received the attached Freedom of Information Act (FOIA) request from Raymond Taraila, Democratic Senatorial Campaign Committee. The FOIA requester is in the "All Other Requesters" category. The chargeable services for "All Other Requesters" are search and duplication.

Please provide the search, and duplication estimate with respect to the responsive documents located within your office. **DO NOT SEARCH YET**. Rather, we need an **ESTIMATE** from you as to how many pages you may locate for this request. **This is only a good faith estimate; you should not search in order to come up with the estimate**. Also, a search need not actually find documents in order to be chargeable, so long as, at the outset, there is a reasonable likelihood that there may be responsive documents, and the search is conducted with due diligence.

Please provide the following estimates:
Please fill in the following information and return this sheet to: Harriette Boyd, FOIA Specialist, Office of Privacy and Open Government, Room 52010 HCHB, hboyd1@doc.gov by C.O.B. May 22, 2017.

Computer Search
Total **estimated** cost for duplication in electronic version (cost of disc or CD). __N/A_____
Total **estimated** hours of time to provide electronic version. _2.5_____
Total **estimated** dollar amount for time to provide electronic version. __$145_____

Manual Search
Total **estimated** number of pages of documents. ___N/A_____
Total **estimated** hours for search. _N/A_____
Total **estimated** dollar amount for search. __N/A_____

This information is needed to compute a final estimated cost.

GRAFF.MARK.HYRUM.1514447892
Digitally signed by GRAFF.MARK.HYRUM.1514447892
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892
Date: 2017.05.31 15:05:22 -04'00'

Signature/Date

__NOAA_____
Bureau

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 31, 2017 4:03 PM
To: Stacey Nathanson - NOAA Federal
Cc: Ruth Ann Lowery - NOAA Federal
Subject: Fwd: Karl-related FOIA requests
Attachments: Karl-related requests extraction 5.31.xls

Sorry, left you off again.

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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---------- Forwarded message ----------
From: **Mark Graff - NOAA Federal** <mark.graff@noaa.gov>
Date: Wed, May 31, 2017 at 3:56 PM
Subject: Karl-related FOIA requests
To: Glenn Tallia - NOAA Federal <glenn.e.tallia@noaa.gov>, Heather Book - NOAA Federal <heather.book@noaa.gov>, Hillary Davidson <hdavidson@doc.gov>, Kristen Gustafson - NOAA Federal <kristen.l.gustafson@noaa.gov>, Matthew Womble - NOAA Affiliate <matthew.womble@noaa.gov>, Rodney Vieira - NOAA Federal <rod.vieira@noaa.gov>, Rose Stanley - NOAA Federal <rose.stanley@noaa.gov>, Russell Vose - NOAA Federal <russell.vose@noaa.gov>, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>, Tim Owen - NOAA Federal <tim.owen@noaa.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>

Good Afternoon,

Attached is the spreadsheet for the 4:00 call.

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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(b)(5)

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(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Sent: Monday, June 5, 2017 12:07 PM
To: Paul Ortiz - NOAA Federal; Samuel Dixon - NOAA Affiliate; Mark Graff - NOAA Federal
Cc: Arlyn Penaranda - NOAA Federal
Subject: Re: FOIA Task Completed for Fee Waiver

Thanks Paul.

Sam/Mark (b)(5) [redacted]? Please advise.

On Mon, Jun 5, 2017 at 8:53 AM, Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov> wrote:

ATTORNEY-CLIENT COMMUNICATION

(b)(5) [redacted]. (b)(5) [redacted].

Paul Ortiz
Enforcement Attorney
NOAA Office of General Counsel
Enforcement Section (Southwest)

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On Mon, Jun 5, 2017 at 8:47 AM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Ana Liza/Paul,

(b)(5) [redacted]. Please advise how to proceed.

R/

Arlyn

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Monday, June 05, 2017 11:38 AM
To: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Cc: Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov>
Subject: RE: FOIA Task Completed for Fee Waiver

(b)(5) [redacted]. I'll get back with you as soon as I can.

From: Ana Liza Malabanan - NOAA Federal [mailto:ana.liza.malabanan@noaa.gov]
Sent: Monday, June 05, 2017 11:34 AM
To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Cc: Paul Ortiz <paul.ortiz@noaa.gov>
Subject: Fwd: FOIA Task Completed for Fee Waiver

Hi Arlyn,

(b)(5) [redacted]."

(b)(5) [redacted].

Thanks!

Ana Liza

---------- Forwarded message ----------
From: **foia@regulations.gov** <foia@regulations.gov>
Date: Mon, Jun 5, 2017 at 8:17 AM
Subject: FOIA Task Completed for Fee Waiver
To: "ana.liza.malabanan@noaa.gov" <ana.liza.malabanan@noaa.gov>

The FOIA Task - Fee Waiver was completed. Additional details for this task are as follows:

Task Details:

- Tracking Number: DOC-NOAA-2017-001279
- Task Type: Fee Waiver
- Outcome: Denied
- Task Description: Fee Waiver Task
- Task Comments: The Seal Conservancy is requesting these records in order to enhance our understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. We intend to make all disseminated documents available for public perusal on our website, sealconservancy.org, for the purpose of increasing the general public's understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. The Seal Conservancy is an IRS-designated 501(c)(3) nonprofit organization since February 2000 (Taxpayer ID # 33-0855202) and has no commercial interest or purpose in this matter.
- Assigned To: NOAA
- Assigned By: Jane Reldan
- Date Sent: 05/27/2017
- Due Date: 05/27/2017
- Closed Date: 06/05/2017

--
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

From: Samuel Dixon <samuel.dixon@noaa.gov>
Sent: Monday, June 5, 2017 12:15 PM
To: Ana Liza Malabanan - NOAA Federal
Cc: Paul Ortiz - NOAA Federal; Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal
Subject: Re: FOIA Task Completed for Fee Waiver

(b)(5) [redacted].

Sam

Samuel Dixon
Contractor - IBSS Corp
NMFS Assistant FOIA Liaison
(301) 427-8739
samuel.dixon@noaa.gov

On Mon, Jun 5, 2017 at 12:06 PM, Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov> wrote:

Thanks Paul.

Sam/Mark (b)(5) [redacted]? Please advise.

On Mon, Jun 5, 2017 at 8:53 AM, Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov> wrote:

ATTORNEY-CLIENT COMMUNICATION

(b)(5) [redacted].

Paul Ortiz
Enforcement Attorney
NOAA Office of General Counsel
Enforcement Section (Southwest)

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is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

On Mon, Jun 5, 2017 at 8:47 AM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Ana Liza/Paul,

(b)(5) [redacted] Please advise how to proceed.

R/

Arlyn

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Monday, June 05, 2017 11:38 AM
To: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Cc: Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov>
Subject: RE: FOIA Task Completed for Fee Waiver

(b)(5) [redacted] I'll get back with you as soon as I can.

From: Ana Liza Malabanan - NOAA Federal [mailto:ana.liza.malabanan@noaa.gov]
Sent: Monday, June 05, 2017 11:34 AM
To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Cc: Paul Ortiz <paul.ortiz@noaa.gov>
Subject: Fwd: FOIA Task Completed for Fee Waiver

Hi Arlyn,

I was going to ask OLE for a fee estimate, but note requester seeks, "All **correspondence** (emails, letters, documents) dated between April 1, 2016 and May 27, 2017, **composed or received by the National Marine Fisheries Service, West Coast Region,** in which "Children's Pool" appears in the correspondence."

(b)(5) [redacted].

Thanks!

Ana Liza

---------- Forwarded message ----------
From: **foia@regulations.gov** <foia@regulations.gov>
Date: Mon, Jun 5, 2017 at 8:17 AM
Subject: FOIA Task Completed for Fee Waiver
To: "ana.liza.malabanan@noaa.gov" <ana.liza.malabanan@noaa.gov>

The FOIA Task - Fee Waiver was completed. Additional details for this task are as follows:

Task Details:

- Tracking Number: DOC-NOAA-2017-001279
- Task Type: Fee Waiver
- Outcome: Denied
- Task Description: Fee Waiver Task
- Task Comments: The Seal Conservancy is requesting these records in order to enhance our understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. We intend to make all disseminated documents available for public perusal on our website, sealconservancy.org, for the purpose of increasing the general public's understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. The Seal Conservancy is an IRS-designated 501(c)(3) nonprofit organization since February 2000 (Taxpayer ID # 33-0855202) and has no commercial interest or purpose in this matter.
- Assigned To: NOAA
- Assigned By: Jane Reldan
- Date Sent: 05/27/2017
- Due Date: 05/27/2017
- Closed Date: 06/05/2017

--
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

From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Sent: Tuesday, June 6, 2017 12:27 PM
To: Arlyn Penaranda - NOAA Federal
Cc: Paul Ortiz; Mark Graff - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Fwd: FOIA Task Completed for Fee Waiver

Hi Arlyn,

(b)(5) [redacted]

[redacted])

Thanks!

Ana Liza

---------- Forwarded message ----------
From: **Arlyn Penaranda - NOAA Federal** <arlyn.penaranda@noaa.gov>
Date: Tue, Jun 6, 2017 at 7:32 AM
Subject: Re: FOIA Task Completed for Fee Waiver
To: Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov>
Cc: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>

(b)(5) [redacted] Please discuss with Sam and Mark.

On Tuesday, June 6, 2017, Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov> wrote:

Here's the response I got from our local FOIA legal person:

(b)(5) [redacted]

[redacted].

That being said, I defer to the FOIA staff in HQ.

Paul Ortiz
Enforcement Attorney

NOAA Office of General Counsel
Enforcement Section (Southwest)

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On Mon, Jun 5, 2017 at 12:53 PM, Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov> wrote:

Is it possible to get a look at the original request?

Paul Ortiz
Enforcement Attorney
NOAA Office of General Counsel
Enforcement Section (Southwest)

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On Mon, Jun 5, 2017 at 8:47 AM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Ana Liza/Paul,

(b)(5) [redacted].

R/

Arlyn

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Monday, June 05, 2017 11:38 AM
To: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Cc: Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov>
Subject: RE: FOIA Task Completed for Fee Waiver

(b)(5) [redacted] I'll get back with you as soon as I can.

From: Ana Liza Malabanan - NOAA Federal [mailto:ana.liza.malabanan@noaa.gov]
Sent: Monday, June 05, 2017 11:34 AM
To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Cc: Paul Ortiz <paul.ortiz@noaa.gov>
Subject: Fwd: FOIA Task Completed for Fee Waiver

Hi Arlyn,

(b)(5) [redacted]

[redacted].

Thanks!

Ana Liza

---------- Forwarded message ----------
From: **foia@regulations.gov** <foia@regulations.gov>
Date: Mon, Jun 5, 2017 at 8:17 AM
Subject: FOIA Task Completed for Fee Waiver
To: "ana.liza.malabanan@noaa.gov" <ana.liza.malabanan@noaa.gov>

The FOIA Task - Fee Waiver was completed. Additional details for this task are as follows:

Task Details:

- Tracking Number: DOC-NOAA-2017-001279
- Task Type: Fee Waiver
- Outcome: Denied
- Task Description: Fee Waiver Task
- Task Comments: The Seal Conservancy is requesting these records in order to enhance our understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. We intend to make all disseminated documents available for public perusal on our website, sealconservancy.org, for the purpose of increasing the general public's understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. The Seal Conservancy is an IRS-designated 501(c)(3) nonprofit organization since February 2000 (Taxpayer ID # 33-0855202) and has no commercial interest or purpose in this matter.
- Assigned To: NOAA
- Assigned By: Jane Reldan
- Date Sent: 05/27/2017
- Due Date: 05/27/2017
- Closed Date: 06/05/2017

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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

--
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>

--
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

From: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Sent: Tuesday, June 6, 2017 12:37 PM
To: Ana Liza Malabanan - NOAA Federal
Cc: Paul Ortiz; Mark Graff - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Fwd: FOIA Task Completed for Fee Waiver

(b)(5) [redacted]

[redacted].

Let me know how you want me to proceed. I'm standing by.

R/

Arlyn

On Tuesday, June 6, 2017, Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov> wrote:

Hi Arlyn,

(b)(5) [redacted]

[redacted] Copying Mark here in case he has different advice...)

Thanks!

Ana Liza

---------- Forwarded message ----------
From: **Arlyn Penaranda - NOAA Federal** <arlyn.penaranda@noaa.gov>
Date: Tue, Jun 6, 2017 at 7:32 AM
Subject: Re: FOIA Task Completed for Fee Waiver
To: Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov>
Cc: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>

(b)(5) [redacted] Please discuss with Sam and Mark.

On Tuesday, June 6, 2017, Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov> wrote:

Here's the response I got from our local FOIA legal person:

(b)(5) [redacted]

[redacted]

[redacted]

That being said, I defer to the FOIA staff in HQ.

Paul Ortiz
Enforcement Attorney
NOAA Office of General Counsel
Enforcement Section (Southwest)

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On Mon, Jun 5, 2017 at 12:53 PM, Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov> wrote:

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Paul Ortiz
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On Mon, Jun 5, 2017 at 8:47 AM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

> Ana Liza/Paul,

(b)(5) [redacted]. Please advise how to proceed.

R/

Arlyn

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Monday, June 05, 2017 11:38 AM
To: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Cc: Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov>
Subject: RE: FOIA Task Completed for Fee Waiver

(b)(5) [redacted] I'll get back with you as soon as I can.

From: Ana Liza Malabanan - NOAA Federal [mailto:ana.liza.malabanan@noaa.gov]
Sent: Monday, June 05, 2017 11:34 AM
To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Cc: Paul Ortiz <paul.ortiz@noaa.gov>
Subject: Fwd: FOIA Task Completed for Fee Waiver

Hi Arlyn,

(b)(5) [redacted]

[redacted]? (b)(5) [redacted]

Thanks!

Ana Liza

---------- Forwarded message ----------
From: **foia@regulations.gov** <foia@regulations.gov>
Date: Mon, Jun 5, 2017 at 8:17 AM
Subject: FOIA Task Completed for Fee Waiver
To: "ana.liza.malabanan@noaa.gov" <ana.liza.malabanan@noaa.gov>

The FOIA Task - Fee Waiver was completed. Additional details for this task are as follows:

Task Details:

- Tracking Number: DOC-NOAA-2017-001279
- Task Type: Fee Waiver
- Outcome: Denied
- Task Description: Fee Waiver Task
- Task Comments: The Seal Conservancy is requesting these records in order to enhance our understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. We intend to make all disseminated documents available for public perusal on our website, sealconservancy.org, for the purpose of increasing the general public's understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. The Seal Conservancy is an IRS-designated 501(c)(3) nonprofit organization since February 2000 (Taxpayer ID # 33-0855202) and has no commercial interest or purpose in this matter.
- Assigned To: NOAA
- Assigned By: Jane Reldan
- Date Sent: 05/27/2017
- Due Date: 05/27/2017
- Closed Date: 06/05/2017

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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

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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>

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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: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Sent: Tuesday, June 6, 2017 12:57 PM
To: Ana Liza Malabanan - NOAA Federal
Cc: Paul Ortiz; Mark Graff - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Re: FOIA Task Completed for Fee Waiver

Ana Liza,

(b)(5) [redacted].

Arlyn

On Tuesday, June 6, 2017, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

(b)(5) [redacted]

[redacted]

Let me know how you want me to proceed. I'm standing by.

R/

Arlyn

On Tuesday, June 6, 2017, Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov> wrote:

Hi Arlyn,

(b)(5) [redacted]

[redacted]. Copying Mark here in case he has different advice...)

Thanks!

Ana Liza

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From: **Arlyn Penaranda - NOAA Federal** <arlyn.penaranda@noaa.gov>
Date: Tue, Jun 6, 2017 at 7:32 AM
Subject: Re: FOIA Task Completed for Fee Waiver
To: Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov>
Cc: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>

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(b)(5) [redacted]

[redacted]

[redacted].

That being said, I defer to the FOIA staff in HQ.

Paul Ortiz
Enforcement Attorney
NOAA Office of General Counsel
Enforcement Section (Southwest)

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Paul Ortiz
Enforcement Attorney
NOAA Office of General Counsel
Enforcement Section (Southwest)

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On Mon, Jun 5, 2017 at 8:47 AM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Ana Liza/Paul,

(b)(5) [redacted] Please advise how to proceed.

R/

Arlyn

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Monday, June 05, 2017 11:38 AM
To: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Cc: Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov>
Subject: RE: FOIA Task Completed for Fee Waiver

(b)(5) [redacted] (b)(5) I'll get back with you as soon as I can.

From: Ana Liza Malabanan - NOAA Federal [mailto:ana.liza.malabanan@noaa.gov]
Sent: Monday, June 05, 2017 11:34 AM
To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Cc: Paul Ortiz <paul.ortiz@noaa.gov>
Subject: Fwd: FOIA Task Completed for Fee Waiver

Hi Arlyn,

(b)(5) [redacted]

[redacted]

Thanks!

Ana Liza

---------- Forwarded message ----------
From: **foia@regulations.gov** <foia@regulations.gov>
Date: Mon, Jun 5, 2017 at 8:17 AM
Subject: FOIA Task Completed for Fee Waiver
To: "ana.liza.malabanan@noaa.gov" <ana.liza.malabanan@noaa.gov>

The FOIA Task - Fee Waiver was completed. Additional details for this task are as follows:

Task Details:

- Tracking Number: DOC-NOAA-2017-001279
- Task Type: Fee Waiver
- Outcome: Denied
- Task Description: Fee Waiver Task
- Task Comments: The Seal Conservancy is requesting these records in order to enhance our understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. We intend to make all disseminated documents available for public perusal on our website, sealconservancy.org, for the purpose of increasing the general public's understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. The Seal Conservancy is an IRS-designated 501(c)(3) nonprofit organization since February 2000 (Taxpayer ID # 33-0855202) and has no commercial interest or purpose in this matter.
- Assigned To: NOAA
- Assigned By: Jane Reldan
- Date Sent: 05/27/2017

- Due Date: 05/27/2017
- Closed Date: 06/05/2017

--

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

--

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>

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From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Sent: Tuesday, June 6, 2017 12:58 PM
To: Arlyn Penaranda - NOAA Federal
Cc: Paul Ortiz; Mark Graff - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Re: FOIA Task Completed for Fee Waiver

No worries! I'll contact requester and will let you know (hopefully by cob).

On Tue, Jun 6, 2017 at 9:57 AM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Ana Liza,

(b)(5) [redacted].

Arlyn

On Tuesday, June 6, 2017, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

(b)(5) [redacted]

Let me know how you want me to proceed. I'm standing by.

R/

Arlyn

On Tuesday, June 6, 2017, Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov> wrote:

Hi Arlyn,

(b)(5) [redacted] Copying Mark here in case he has different advice...)

Thanks!

Ana Liza

---------- Forwarded message ----------
From: **Arlyn Penaranda - NOAA Federal** <arlyn.penaranda@noaa.gov>
Date: Tue, Jun 6, 2017 at 7:32 AM
Subject: Re: FOIA Task Completed for Fee Waiver
To: Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov>
Cc: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>

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On Tuesday, June 6, 2017, Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov> wrote:

Here's the response I got from our local FOIA legal person:

(b)(5) [redacted]

That being said, I defer to the FOIA staff in HQ.

Paul Ortiz
Enforcement Attorney
NOAA Office of General Counsel
Enforcement Section (Southwest)

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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 5, 2017 at 12:53 PM, Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov> wrote:

Is it possible to get a look at the original request?

Paul Ortiz
Enforcement Attorney
NOAA Office of General Counsel

Enforcement Section (Southwest)

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On Mon, Jun 5, 2017 at 8:47 AM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Ana Liza/Paul,

(b)(5) [redacted]. Please advise how to proceed.

R/

Arlyn

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Monday, June 05, 2017 11:38 AM
To: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Cc: Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov>
Subject: RE: FOIA Task Completed for Fee Waiver

(b)(5) [redacted]. I'll get back with you as soon as I can.

From: Ana Liza Malabanan - NOAA Federal [mailto:ana.liza.malabanan@noaa.gov]
Sent: Monday, June 05, 2017 11:34 AM
To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Cc: Paul Ortiz <paul.ortiz@noaa.gov>
Subject: Fwd: FOIA Task Completed for Fee Waiver

Hi Arlyn,

(b)(5) [redacted]

[redacted].

Thanks!

Ana Liza

---------- Forwarded message ----------
From: **foia@regulations.gov** <foia@regulations.gov>
Date: Mon, Jun 5, 2017 at 8:17 AM
Subject: FOIA Task Completed for Fee Waiver
To: "ana.liza.malabanan@noaa.gov" <ana.liza.malabanan@noaa.gov>

The FOIA Task - Fee Waiver was completed. Additional details for this task are as follows:

Task Details:

- Tracking Number: DOC-NOAA-2017-001279
- Task Type: Fee Waiver
- Outcome: Denied
- Task Description: Fee Waiver Task
- Task Comments: The Seal Conservancy is requesting these records in order to enhance our understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. We intend to make all disseminated documents available for public perusal on our website, sealconservancy.org, for the purpose of increasing the general public's understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. The Seal Conservancy is an IRS-designated

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- Assigned To: NOAA
- Assigned By: Jane Reldan
- Date Sent: 05/27/2017
- Due Date: 05/27/2017
- Closed Date: 06/05/2017

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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

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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

From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Sent: Tuesday, June 6, 2017 4:38 PM
To: Arlyn Penaranda - NOAA Federal
Cc: Paul Ortiz; Mark Graff - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Re: FOIA Task Completed for Fee Waiver

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Date: Tue, Jun 6, 2017 at 7:32 AM
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To: Paul Ortiz - NOAA Federal <paul.ortiz@noaa.gov>
Cc: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>

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Enforcement Attorney
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Enforcement Attorney
NOAA Office of General Counsel
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Subject: RE: FOIA Task Completed for Fee Waiver

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To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Cc: Paul Ortiz <paul.ortiz@noaa.gov>
Subject: Fwd: FOIA Task Completed for Fee Waiver

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Thanks!

Ana Liza

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From: **foia@regulations.gov** <foia@regulations.gov>
Date: Mon, Jun 5, 2017 at 8:17 AM
Subject: FOIA Task Completed for Fee Waiver
To: "ana.liza.malabanan@noaa.gov" <ana.liza.malabanan@noaa.gov>

The FOIA Task - Fee Waiver was completed. Additional details for this task are as follows:

Task Details:

- Tracking Number: DOC-NOAA-2017-001279
- Task Type: Fee Waiver

- Outcome: Denied
- Task Description: Fee Waiver Task
- Task Comments: The Seal Conservancy is requesting these records in order to enhance our understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. We intend to make all disseminated documents available for public perusal on our website, sealconservancy.org, for the purpose of increasing the general public's understanding of the operations of the National Marine Fisheries Service, West Coast Region, specifically with regard to its policies and handling of issues pertaining to the harbor seal rookery at the Children's Pool Beach in La Jolla. The Seal Conservancy is an IRS-designated 501(c)(3) nonprofit organization since February 2000 (Taxpayer ID # 33-0855202) and has no commercial interest or purpose in this matter.
- Assigned To: NOAA
- Assigned By: Jane Reldan
- Date Sent: 05/27/2017
- Due Date: 05/27/2017
- Closed Date: 06/05/2017

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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

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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

From: Maria Williams - NOAA Federal <maria.williams@noaa.gov>
Sent: Wednesday, June 7, 2017 9:19 AM
To: Mark Graff - NOAA Federal; Glenn Tallia - NOAA Federal
Cc: Al.Wissman
Subject: FOIA DOC-NOAA-2017-001191 - Review/Approval Needed
Attachments: 1191_Paese_Redacted.pdf; 1191_Paese_Unredacted-Unreleaseable.pdf; FAL - 1191.docx

Gentlemen,

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

Respectfully,

Maria S. Williams

Property|NESDIS FOIA Liaison |Admin Officer|FAC-COR II
National Oceanic and Atmospheric Administration
Satellite and Information Service
Office of the Assistant Chief Information Officer
Phone: 202-308-4959

Follow NOAASatellites on Social Media: Facebook, Twitter, YouTube

"Talent wins games, but teamwork and intelligence wins championship"

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From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Wednesday, June 7, 2017 10:31 AM
To: Mark Graff - NOAA Affiliate
Subject: May 2017 FOIA Monthly Report (DRAFT FOR YOUR REVIEW/APPROVAL)
Attachments: FOIA Monthly Status Report 05-31-2017.pdf; FOIA Monthly Status Report 05-31-2017.xlsx; Incoming_052017.xls; Backlog_052017.xls; Closed_052017.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

--
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-2017-000965	Request	Sandra K. Stewart	04/06/2017
DOC-NOAA-2017-000922	Request	Megan M. Lucente	03/31/2017
DOC-NOAA-2017-000298	Request	Charles Mouton	11/30/2016
DOC-NOAA-2016-001241	Request	Shomari B. Wade	05/18/2016
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-2017-000169	Request	MICHAEL PEPSON	11/09/2016
DOC-NOAA-2017-000952	Request	Greg Wallace	04/05/2017
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-2016-001094	Request	Anthony Arguez	05/02/2016
DOC-NOAA-2016-000351	Request	Bill Marshall	10/30/2015
DOC-NOAA-2017-000994	Request	Mariel Combs	04/10/2017
DOC-NOAA-2017-001024	Request	Arthur Severance	04/04/2017
DOC-NOAA-2017-000993	Request	Anna Crowder	03/27/2017
DOC-NOAA-2017-000737	Request	Matthew Johnston	03/07/2017
DOC-NOAA-2017-000865	Request	Zeenat Mian	03/23/2017
DOC-NOAA-2017-000986	Request	Tristan R. Armer	04/10/2017
DOC-NOAA-2017-000539	Referral	Jamie Pang	01/30/2017
DOC-NOAA-2017-000744	Request	Zeenat Mian	03/08/2017
DOC-NOAA-2017-000596	Request	Adam Carlesco	02/02/2017
DOC-NOAA-2017-000304	Request	Bryn Blomberg	11/30/2016
DOC-NOAA-2017-000615	Request	Russ Rector	02/07/2017
DOC-NOAA-2017-000342	Request	Ryan P. Mulvey	12/13/2016
DOC-NOAA-2017-000170	Request	MICHAEL PEPSON	11/09/2016
DOC-NOAA-2017-000195	Request	Thomas Knudson	11/17/2016
DOC-NOAA-2016-001214	Request	bruce weyhrauch	05/27/2016
DOC-NOAA-2016-001762	Request	Thomas Knudson	09/14/2016
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-2016-001533	Request	J W August	07/27/2016
DOC-NOAA-2016-001299	Request	Thomas Knudson	06/15/2016
DOC-NOAA-2016-001326	Request	Thomas Knudson	06/21/2016
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-2015-001860	Request	Delcianna Winders	09/04/2015
DOC-NOAA-2016-000603	Request	Margaret Townsend	02/10/2016
DOC-NOAA-2016-000094	Request	Josh Schopf	10/14/2015
DOC-NOAA-2014-001474	Request	Eric Huber	08/12/2014
DOC-NOAA-2015-000295	Request	Office Administrator	11/21/2014
DOC-NOAA-2015-000190	Request	Miyo Sakashita	11/02/2014
DOC-NOAA-2017-000881	Request	Radu Munteanu	03/28/2017
DOC-NOAA-2017-000438	Request	Claudia Lucio	01/11/2017
DOC-NOAA-2017-000299	Request	Chris Hogan	11/30/2016
DOC-NOAA-2017-000204	Request	Belinda Brannon	11/21/2016
DOC-NOAA-2016-001743	Request	John Greenewald	09/12/2016
DOC-NOAA-2017-000535	Request	John Ullom	01/18/2017

DOC-NOAA-2017-000384	Request Marshall Morales	01/03/2017
DOC-NOAA-2017-000414	Request Arnold & Porter Kaye Scholer LLP	01/09/2017
DOC-NOAA-2016-001599	Request Machelle R. Hall	08/12/2016
DOC-NOAA-2016-000192	Request John Ferro	11/03/2015
DOC-NOAA-2015-000706	Request Megan R. Wilson	02/18/2015
DOC-NOAA-2017-001030	Request Bob Hepler	04/14/2017
DOC-NOAA-2017-000912	Request James Renaldi	03/29/2017
DOC-NOAA-2017-000532	Request Corin Hoggard	01/27/2017
DOC-NOAA-2017-000186	Request Elizabeth Nowicki	11/16/2016
DOC-NOAA-2016-001403	Request Ivria Fried	07/07/2016
DOC-NOAA-2017-000794	Request Jared E. Knicley	03/14/2017
DOC-NOAA-2016-001775	Request Ehsan Naranji	09/19/2016
DOC-NOAA-2017-000917	Request James Renaldi	03/30/2017
DOC-NOAA-2017-001007	Request Seth Borenstein	03/31/2017
DOC-NOAA-2017-000846	Request Elizabeth N. Moran	03/16/2017
DOC-NOAA-2017-000845	Request Elizabeth N. Moran	03/16/2017
DOC-NOAA-2017-001021	Request RICHARD J. HIRN	03/31/2017
DOC-NOAA-2017-000187	Request Elizabeth Nowicki	11/16/2016
DOC-NOAA-2016-001346	Request Tammy Murphy	06/10/2016

Assigned To	Due	Days Backlogged
AGO	05/09/2017	11
AGO	05/08/2017	19
AGO	01/13/2017	55
AGO	06/30/2016	232
AGO	10/08/2015	414
AGO	10/08/2015	414
AGO	07/31/2015	462
LA	01/05/2017	104
NESDIS	05/09/2017	18
NESDIS	04/05/2017	42
NESDIS	03/29/2017	47
NESDIS	03/24/2017	50
NESDIS	07/20/2016	219
NESDIS	01/14/2016	349
NMFS	05/09/2017	2
NMFS	06/09/2017	5
NMFS	06/16/2017	8
NMFS	04/06/2017	11
NMFS	05/08/2017	15
NMFS	05/09/2017	18
NMFS	03/01/2017	30
NMFS	04/06/2017	41
NMFS	03/28/2017	48
NMFS	01/13/2017	51
NMFS	03/15/2017	57
NMFS	02/03/2017	74
NMFS	01/05/2017	104
NMFS	12/30/2016	107
NMFS	07/31/2017	140
NMFS	11/10/2016	140
NMFS	10/28/2016	149
NMFS	10/27/2016	150
NMFS	10/14/2016	169
NMFS	08/29/2016	191
NMFS	07/20/2016	201
NMFS	07/26/2016	215
NMFS	05/25/2016	250
NMFS	02/04/2016	251
NMFS	05/04/2016	259
NMFS	10/23/2015	263
NMFS	03/15/2016	301
NMFS	02/18/2016	335
NMFS	09/10/2014	428
NMFS	12/24/2014	605
NMFS	12/05/2014	618
NOAA FOIA	05/08/2017	19
NOAA FOIA	02/24/2017	70
NOAA FOIA	01/13/2017	98
NOAA FOIA	12/30/2016	100
NOAA FOIA	10/13/2016	160
NOS	02/27/2017	3

NOS	02/24/2017	9
NOS	03/07/2017	40
NOS	09/29/2016	145
NOS	12/04/2015	376
NOS	10/13/2015	556
NWS	05/16/2017	13
NWS	05/08/2017	14
NWS	03/02/2017	36
NWS	12/15/2016	117
NWS	08/12/2016	202
OC	04/17/2017	34
OCAO	11/01/2016	147
OMAO	05/08/2017	14
USEC	05/09/2017	18
USEC	04/18/2017	33
USEC	04/13/2017	36
WFMO	05/10/2017	17
WFMO	12/15/2016	117
WFMO	08/31/2016	189

Tracking Number	Type	Requester
DOC-NOAA-2017-001259	Request	Laura E. Nielsen
DOC-NOAA-2017-001257	Request	Laura E. Nielsen
DOC-NOAA-2017-001254	Request	Laura E. Nielsen
DOC-NOAA-2017-001102	Request	Jeffrey Howerton
DOC-NOAA-2017-000609	Request	Brian Murphy
DOC-NOAA-2017-001066	Request	Margaret Townsend
DOC-NOAA-2017-000441	Request	Elizabeth N. Moran
DOC-NOAA-2017-000359	Request	David Moser
DOC-NOAA-2017-001176	Request	John Freitas
DOC-NOAA-2017-001174	Request	Shellie Harper
DOC-NOAA-2017-001175	Request	Zeenat Mian
DOC-NOAA-2017-001091	Request	Priya P. Kamath
DOC-NOAA-2017-001042	Request	russ h. rector
DOC-NOAA-2017-001014	Request	Steven P. Gray
DOC-NOAA-2017-001139	Request	David A. Moskowitz
DOC-NOAA-2017-000992	Request	Joanna McCall
DOC-NOAA-2017-000944	Request	Samuel K. Rebmann
DOC-NOAA-2017-001006	Request	Stephen Mashuda
DOC-NOAA-2017-000921	Request	John R. Leek
DOC-NOAA-2017-000851	Request	Jared S. Goodman
DOC-NOAA-2017-000785	Request	Gary Macfarlane
DOC-NOAA-2017-000780	Request	Thomas Knudson
DOC-NOAA-2017-000752	Request	Sarah B. Brady
DOC-NOAA-2017-000701	Request	Zeenat Mian
DOC-NOAA-2017-000631	Request	Benjamin P. Simpson
DOC-NOAA-2016-000605	Request	Margaret Townsend
DOC-NOAA-2017-001263	Request	Laura E. Nielsen
DOC-NOAA-2017-001262	Request	Laura E. Nielsen
DOC-NOAA-2017-001260	Request	Laura E. Nielsen
DOC-NOAA-2017-001258	Request	Laura E. Nielsen
DOC-NOAA-2017-001256	Request	Laura E. Nielsen
DOC-NOAA-2017-001255	Request	Laura E. Nielsen
DOC-NOAA-2017-001218	Request	Nathan Eagle
DOC-NOAA-2017-001210	Request	KC Ashmore
DOC-NOAA-2017-001181	Request	Eileen L. Morrison
DOC-NOAA-2017-001180	Request	Eileen L. Morrison
DOC-NOAA-2017-001118	Request	Tarek Alaruri
DOC-NOAA-2015-000111	Request	Tiffany Cale
DOC-NOAA-2017-000768	Request	Julio C. Gomez
DOC-NOAA-2017-000938	Request	Emily C. Atkin
DOC-NOAA-2017-001016	Request	Allan Blutstein
DOC-NOAA-2017-000708	Request	Emily C. Atkin
DOC-NOAA-2017-000408	Request	Jeremy Singer-Vine
DOC-NOAA-2017-001008	Request	Seth Borenstein

Requester Organization	Submitted	Received
Riverside Technology, inc.	05/23/2017	05/24/2017
Riverside Technology, inc.	05/23/2017	05/24/2017
Riverside Technology, inc.	05/23/2017	05/24/2017
	04/17/2017	04/17/2017
Geographic Information Services, Inc.	02/03/2017	02/03/2017
	04/10/2017	04/10/2017
GARY GILBERT & ASSOCIATES, P.C.	01/11/2017	01/11/2017
	12/21/2016	12/21/2016
	05/08/2017	05/08/2017
South Pacific Tuna Corporation	05/05/2017	05/05/2017
	05/05/2017	05/05/2017
Earthjustice	04/26/2017	04/26/2017
dff	04/17/2017	04/17/2017
Law.Offices of Steven P. Gray	04/12/2017	04/12/2017
The Conservation Angler	04/12/2017	04/12/2017
National Corporate Research, LTD	04/05/2017	04/05/2017
	04/04/2017	04/05/2017
Earthjustice	04/04/2017	04/04/2017
San Diego Council of Divers	03/30/2017	03/31/2017
PETA Foundation	03/21/2017	03/21/2017
Friends of the Clearwater	03/13/2017	03/13/2017
Center for Investigative Reporting	03/10/2017	03/13/2017
Delaware Riverkeeper Network	03/08/2017	03/08/2017
	03/01/2017	03/01/2017
Recirculating Farms Coalition	02/15/2017	02/15/2017
	02/10/2016	02/10/2016
Riverside Technology, inc.	05/23/2017	05/24/2017
Riverside Technology, inc.	05/23/2017	05/24/2017
Riverside Technology, inc.	05/23/2017	05/24/2017
Riverside Technology, inc.	05/23/2017	05/24/2017
Riverside Technology, inc.	05/23/2017	05/24/2017
Riverside Technology, inc.	05/23/2017	05/24/2017
Honolulu Civil Beat	05/16/2017	05/17/2017
	05/15/2017	05/15/2017
Goodwin Procter LLP	05/09/2017	05/09/2017
Goodwin Procter LLP	05/09/2017	05/09/2017
https://docs.google.com/presentation/d/1KLWKNktpZyP2iaSxjEbtZrAQ	04/28/2017	04/28/2017
	10/17/2014	10/17/2014
GOMEZ LLC Attorney At Law	03/10/2017	03/10/2017
New Republic	04/03/2017	04/03/2017
America Rising	03/31/2017	03/31/2017
New Republic	03/01/2017	03/01/2017
BuzzFeed News	01/06/2017	01/09/2017
The Associated Press	03/31/2017	03/31/2017

Assigned To	Perfected?	Due	Closed Date	Status
AGO	Yes	06/22/2017	05/31/2017	Closed
AGO	Yes	06/22/2017	05/31/2017	Closed
AGO	Yes	06/22/2017	05/31/2017	Closed
AGO	Yes	05/30/2017	05/30/2017	Closed
AGO	Yes	03/15/2017	05/17/2017	Closed
NESDIS	Yes	05/17/2017	05/10/2017	Closed
NESDIS	Yes	03/10/2017	05/25/2017	Closed
NMFS	Yes	05/02/2017	05/02/2017	Closed
NMFS	Yes	06/06/2017	05/31/2017	Closed
NMFS	Yes	06/06/2017	05/31/2017	Closed
NMFS	Yes	06/05/2017	05/25/2017	Closed
NMFS	Yes	06/16/2017	05/19/2017	Closed
NMFS	Yes	05/16/2017	05/22/2017	Closed
NMFS	Yes	05/16/2017	05/22/2017	Closed
NMFS	Yes	06/14/2017	05/30/2017	Closed
NMFS	Yes	05/08/2017	05/03/2017	Closed
NMFS	Yes	05/08/2017	05/02/2017	Closed
NMFS	Yes	05/23/2017	05/10/2017	Closed
NMFS	Yes	05/22/2017	05/10/2017	Closed
NMFS	Yes	05/08/2017	05/14/2017	Closed
NMFS	Yes	05/01/2017	05/02/2017	Closed
NMFS	Yes	04/26/2017	05/25/2017	Closed
NMFS	Yes	04/06/2017	05/10/2017	Closed
NMFS	Yes	04/18/2017	05/08/2017	Closed
NMFS	Yes	03/21/2017	05/03/2017	Closed
NMFS	Yes	03/15/2016	05/11/2017	Closed
NOAA FOIA	No	TBD	05/25/2017	Closed
NOAA FOIA	No	TBD	05/25/2017	Closed
NOAA FOIA	No	TBD	05/24/2017	Closed
NOAA FOIA	No	TBD	05/24/2017	Closed
NOAA FOIA	No	TBD	05/24/2017	Closed
NOAA FOIA	No	TBD	05/24/2017	Closed
NOAA FOIA	Yes	06/20/2017	05/24/2017	Closed
NOAA FOIA	No	TBD	05/22/2017	Closed
NOAA FOIA	No	TBD	05/18/2017	Closed
NOAA FOIA	No	TBD	05/18/2017	Closed
NOAA FOIA	No	TBD	05/10/2017	Closed
NOS	Yes	11/17/2014	05/18/2017	Closed
NWS	Yes	04/12/2017	05/01/2017	Closed
USEC	Yes	05/08/2017	05/11/2017	Closed
USEC	Yes	05/10/2017	05/11/2017	Closed
USEC	Yes	04/12/2017	05/11/2017	Closed
USEC	Yes	02/21/2017	05/11/2017	Closed
WFMO	Yes	05/09/2017	05/10/2017	Closed

Dispositions
Duplicate request
Duplicate request
Duplicate request
No records
Request withdrawn
No records
Fee-related reason
Full grant
Full grant
Full grant
Full grant
Request withdrawn
Full grant
Partial grant/partial denial
Request withdrawn
Full grant
Full grant
No records
Full grant
Other - Publicly available information
Partial grant/partial denial
Fee-related reason
Full grant
Partial grant/partial denial
Other - Admin close - no response from requester
Partial grant/partial denial
Other - Aggregate cases
Other - Aggregate cases
Other - Aggregate cases
Other - Aggregate cases
Other - Aggregate cases
Other - Aggregate cases
Other - Publicly available information
Improper FOIA request for other reason
Duplicate request
Duplicate request
Other - Aggregate cases
Full grant
No records
No records
No records
Partial grant/partial denial
Partial grant/partial denial
Full grant

Detail
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SCI
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SCI
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SC
The time frame I am interested in for grants is or efforts to coordinate on anything current related to the subject ma
I am seeking the RFP / SOW / PWS for a contract that was awarded on July 16th 2013 entitled TECHNICAL SUPP
The Center requests from the National Oceanic and Atmospheric Administration (“NOAA”) all agency directives, in
•Copies of any and all documents and communications related to the application, review, and consideration of Tho
For NOAA Fisheries, West Coast Region, California Coastal Office: All correspondence (including emails), reports
I need is some information on fish catch per day for U.S. boats in the period between September of 2012 and May
We are preparing for activities in 2018 which are now more firmly established operationally with the completion of a
REVISED SCOPE: All research papers / documents related to attachment of external devices to a Hawaiian monk
We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, fil
please send me the complete mmir on file for INSTITUTE FOR MARINE SCIENCES.
Cody Barton; Case No. 3K0-15-205 CI. The purpose of this letter is to request a copy of all documents generated c
All documents regarding the rate of conversion (i.e. passage loss, natural mortality, unaccounted for harvest, or oth
One copy of the January 20, 2017 letter submitted by National Marine Fisheries Serviceto the U.S. Anny Cotps of E
To Whom It May Concern: Pursuant to the Freedom of Information Act (FOIA) as Amended, I hereby quest copies
Biological opinions or informal consultations the Coast Guard conducted with NMFS as a result of the rulemaking i
This is to request any and all copies or references to, scientific papers or findings, observations by NOAA scientists
On behalf of People for the Ethical Treatment of Animals (PETA), and pursuant to the Freedom of Information Act,
Pursuant to the FOIA, Friends of the Clearwater requests all records, including but not limited to emails, phone logs
For calendar year 2013: A.) Copies of all closed National Marine Fisheries Service law enforcement investigations
Any and all requests for technical assistance for projects or initiatives that would impact the Atlantic sturgeon in the
DESCRIPTION MODIFIED 3/9: Under the Freedom of Information Act I would like to request all documents and co
PLEASE SEE ATTACHMENT FOR FULL REQUEST: This letter is a request for records under the Freedom of Info
Significant Portion of Range Policy 1. All records related to the Joint Policy on Interpretation of the Phrase ‘‘Signific
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
I'd like to request information relating to special funds of the Western Pacific Regional Fishery Management Counc
Monthly Precipitation records for the area of Kaufman County, Texas from the dates of February 1, 2013 until Pres
This request is made to the National Marine Fisheries Service. I request the following: All Records (defined to inclu
This Request is directed to the National Marine Fisheries Service. I request the following: All Records (defined to in
I'd like to file a formal request for every Software & Hardware purchase/quote in the last 3 years. We'd like the
All documents pertaining to the post-2010 georeferencing of T-333 (an 1850-era survey of portions of San Diego B
Copies of all reports submitted to the Secretary of Commerce pursuant to 15 U.S.C. §330a, concerning “weat
I request a copy of the following documents: Any and all resignation letters submitted to the agency administrator s
Any email sent or received by acting Administrator Benjamin Friedman that mentions Donald Trump on November
Any and all communications between National Oceanic and Atmospheric Administration employees and President
All emails (and associated attachments) to, from, cc’ing, or bcc’ing NOAA Administrator Kathryn Sullivan between I
Requester modified request: Erik Noble resume and position description only. See Correspondence Other

ITECH Contract DOCDG133E12CQ0020 Task Order 0007 AND Task Order 0008 awarded to Earth Res
ITECH Contract DOCDG133E10CQ0031 Task Order 0002 and Task Order 0008 awarded to Science ar
ITECH Contract DOCDG133E10CQ0034 Task Order 0004, Task Order 0002, AND Task Order 0006 av
tter is the last five years. I am making a records request for all information (Documents, photos, emails
PORT SERVICES FOR COASTAL SERVICES CENTER. This contract was awarded to the Baldwin Gro
structions, and/or other communications, including communications with the Trump administration trans
mas E. Smith, Jr. for the Physical Scientist, ZP- 1301-4 (DE/CR), position (Vacancy Announcement Num
, Biological Assessments, and all other documents related to the proposal by the California Department
2013 , if possible without mentioning Boat names...a few boats with the Carol Linda size.
a modified Treaty. Although these preparations may also be impacted by the adoption of a revised conse
seal. ---------- RW71/72 (forme
es, electronic mail records, or other documents, which were generated, received, kept, and/or considere

concerning an incident that took place on May 22, 2013, in Kodiak, Alaska concerning an incident that wa
ner non-harvest sources of mortality) of Passive Integrated Transponder (PIT)-tagged adult salmon and
Engineers as part of the Apalachicola-Chattahoochee-Flint River Basin Master Water Control Manual up
of the following records: All Marine Mammal Inventory Reports for all available fiscal years; all requests
dentified in the FOIA request letter, 76 Fed Reg. 23191 (April 26, 2011), dated between January 1, 2006
s or other bona fide research used to validate the “Share the Shore” program first introduced as a Faceb
I request copies of all records regarding Permit No. 774, issued to SeaWorld on October 7, 1992, to im
s, letters, and other communication between NOAA Fisheries and the US Forest Service regarding the
pertaining to harassment of fisheries observers, intimidation of fisheries observers, sexual harassment
e Delaware River; Any and all requests for informal consultation for projects or initiatives that would impa
ommunications inter office (within NOAA) and intra-office (between NOAA and external sources/entities)
ormation Act, 5 USC § 552, et seq. Specifically, Recirculating Farms Coalition requests the followin
ant Portion of Its Range'' in the Endangered Species Act’s Definitions of “Endangered Species” and “Th
2CQ0021 Task Order 0006 awarded to I.M. Systems Group, Inc. (IMSG).
2CQ0021 Task Order 0005 awarded to I.M. Systems Group, Inc. (IMSG).
2CQ0020 Task Order 0007 awarded to Earth Resources Technology, Inc. (ERT).
0CQ0031 Task Order 0002 awarded to Science and Technology Corporation (STC).
0CQ0034 Task Order 0006 awarded to Global Science and Technology, Inc.
0CQ0034 Task Order 0002 awarded to Global Science and Technology, Inc.
cil (WPRFMC). Specifically, I'm requesting: 1) The general ledger in the greatest level of detail for the W
ent.(the date this order is being processed). and a Business Record Affidavit for the records being requ
ide data, information, emails, reports, and comments) received on or after January 29, 2013 from the Ne
nclude data, information, emails, reports, and comments) received on or after January 29, 2013 from the
e company, manufacturing sku, pricing, product, msrp, purchase price & reseller. We'd like these in
Bay), including the work and correspondence files of current and former NOAA employees and independ
ther modification” as defined by federal law 15 U.S.C. §330, from 1971 (the date this federal law wa
since November 8, 2016. This includes but is not limited to correspondence via email, fax messages, an
8, 2016 or November 9, 2016, excluding news articles or other public source material.
Donald Trump's transition team for the agency, including but not limited to documents distributed to NO
Dec. 10, 2016 and Dec. 23, 2016. I request these records in their native digital formats, where possible,

[redacted]

ources Technology, Inc. (ERT). ---------- We are
d Technology Corporation (STC). ---------- V
warded to Global Science and Technology, Inc. ----------
, texts, videos, data and other records including other requests) associated with: 2) The anti nuclear mo
oup, and it appears that it went through a GSA contract. BALDWIN GROUP INC THE GS10F0312R / DC
ition team, instructing agency and/or department staff to not use, or to remove from formal agency com
nber NSDIS-OSP0- 2016-0037), located in Suitland, Maryland, from January 1, 2016 to present, includin
of Transportation (Caltrans) to replace or modify the Lagunitas Creek Bridge on Highway One (a.k.a. St

ervation and management measure in December at the WCPF Commission annual meeting, we are in t
rly RW08) Can you please provide information on the following: - approximate length and weight of RW
ed by NMFS Southeast Regional Office relating to: 1. The data sources used to estimate the bycatch of s

as witnessed by Megan Savard, a Saltwater Inc. employee who was the fisheries observer assigned to t
steelhead between Bonneville and McNary dams on the Columbia River during the period from January
date and Water Supply Storage Assessment process. The letter is referenced on page 11 the Anny Cot
for permits authorizing the taking or importation of a marine mammal for purposes of scientific researc
, to December 31, 2011.
ook campaign heralded in https://www.facebook.com/NOAAFisheriesWestCoast/photos/a.2181767382
port the orca Tilikum pursuant to the Marine Mammal Protection Act (MMPA), excepting correspondenc
Johnson Bar Salvage Sale (Nez Perce – Clearwater National Forests) since May 12, 2016, the date of th
of fisheries observers, assault of fisheries observers, interference with fisheries observers, coercion of fi
ct the Atlantic sturgeon in the Delaware River; NMFS/NOAA responses to requests for informal consult
pertaining to the email titled "FORMAL COMPLAINT: HARASSED yet again by HMMA volunteer&
g records from the National Marine Fisheries Service: • The most recent stock assessment data for the
reatened Species." 79 Fed. Reg. 37,578 (July 1, 2014); 76 Fed. Reg. 76,987 (Dec. 9, 2011). 2. All recor

estern Pacific Sustainable Fisheries Fund over the 5 years preceding a response to this request.
ested. I am an attorney, requesting these records for a client.
ew York State Department of Environmental Conservation about, related to, or concerning the Biological
New York State Department of Environmental Conservation about, related to, or concerning the Biolog
electronic copies, please feel free to reach me at any time. We'd like the information in a CSV, JSON,
ent contractors who worked on and/or corresponded about the foregoing project, including, without limit
as enacted) to the present.
d written notes.

AA employees from transition officials. Please also include communications between NOAA employees t
rather than on paper or converted to PDF files.

requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOC
---------- We are requesting information under the Freedom of Information Act for NOAA SCITECH C
vement from the 1970's and 1980's. I am particularly interested in information from the protests against
OCEA133C13NC0616 Award Date: 07/16/2013 Expiration Date: 08/14/2018
munications, any climate change-related or energy-related words or phrases, including but not limited to
ıg but not limited to assessments and communications regarding his qualifications for this position. •Co
ate Route One) in Point Reyes Station, California.

he process of determining fishing days to be procured under the Treaty as well via bi-lateral arrangeme
72 - dimensions and weight of attached camera - camera attachment method used - purpose of the cam
sharks in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Southeastern Atl

he F/V Laura.
1, 2012 to the date of the agency's search for documents responsive to this request, specifically includi
ps of Engineers' Record of Decision for the ApalachicolaChattahoochee- Flint River Basin Master Wate
ı, public display, or enhancing the survival or recovery of a species or stock filed between January 1st, 1

99054.47917.187396671377061/957240687725985/?type=3&theater The NOAA Fisheries West C
e between the agency and PETA, the Animal Welfare Institute, and their representatives. This request i
ıe court ordered preliminary injunction in the civil case over the Forest Service's Johnson Bar Fire Salva
isheries observers and hostile work environments for fisheries observers. B.) All attachments, photos ar
ation for projects or initiatives that would impact the Atlantic sturgeon in the Delaware River; Any and all
quot; sent by Zeenat Mian. Period 11th January 2017 until present. I request to receive a copy of any le
Barataria Bay Estuarian System Stock of Common Bottlenose Dolphins. • All data concerning unusual
ds related to, concerning, and/or generated by or in connection with the Significant Portion of Range Te

I would like this record provided in electronic format; if the information cannot be exported in an Excel c

Opinion and Biological Monitoring Plan for Indian Point Units 2 and 3.
ical Opinion and Biological Monitoring Plan for Indian Point Units 2 and 3.
.DOC formatting if possible. I'd also, like to FOIA the managers in charge of procurement and sourcing f
ation, David Doyle, Doug Graham, Steve Matula, Nick Perugini, Cindy Craig, Joe Evjen and an unname

that cite instructions from Trump transition team officials. REQUESTER INDICATED SHE IS WILLING

[redacted]
3E12CQ0020 Task Order 0008 awarded to Earth Resources Technology, Inc. (ERT).
:DG133E10CQ0031 Task Order 0008 awarded to Science and Technology Corporation (STC).
Contract DOCDG133E10CQ0034 Task Order 0004 awarded to Global Science and Technology, Inc.
PG and E's Diablo Canyon in San Luis Obispo County California involving groups such as Mothers for F

"climate change," "global warming," "climate disruption," "greenhouse gas emissions," "emissions reduc
pies of any and all documents and communications which refer or relate to potentially placing Thomas E

nts. With the price of fishing days both under the Treaty and under bi-lateral arrangements being so cost
nera - Camera ownership - length of time it will remain on the seal - camera removal methods - collatera
antic snapper-grouper fishery (bottom longline and vertical line). 2. Logbook data regarding the bycatch

ing (but not limited to): - Emails, notes, and other correspondence between NOAA Fisheries staff and th
r Control Manual Update and Water Supply Storage Assessment for Alabama, Florida, and Georgia, dat
997 and date of receipt of the requested information; all recommendations of non-releasability provided

Coast office should have all the needed references in one place in electronic form.
ncludes, but is not limited to, memoranda, reports, notes, letters, emails, and other correspondence.
ge project. If this information is available electronically, that would be preferable.
nd video associated with above investigations.
requests for formal consultation for projects or initiatives that would impact the Atlantic sturgeon in the D
tters produced by Office of NOAA General Counsel and signed by NOAA to be used in the TRO process
mortality events in Atlantic bottlenose dolphins in the Gulf of Mexico from 2009 to present. • All informati
am consisting of representatives from the U.S. Fish and Wildlife Service and NOAA Fisheries.

r comma-delimited format, please let me know available formats. 2) To the extent not otherwise produc

for each branch location. Please provide their contact information both email and phone number.
d independent contractor, including correspondence with the California State Lands Commission (Steve

TO SCOPE THE REQUEST TO INCLUDE COMMUNICATIONS AFTER THE ELECTION THAT FIT TH

[redacted]

Peace, the Abalone Alliance and Musicians United for Safe Energy. There are significant aspects on the

ctions," and/or "Paris agreement," and any related words or phrases.
. Smith, Jr., in the Physical Scientist, ZP-1301-4 (DE/CR), position (Vacancy Announcement Number NS

tly, we believe it is important that we review our options very carefully. In this regard we are asking for yo
l effects on seal's behaviour while camera is attached - risk level of entanglement for the seal - monitori
of sharks, by species, in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Sc

e NOAA Northwest Fisheries Science Center and the Technical Advisory Committee to the United State
ted March 30, 2017. We request that you provide us with accurate copies or a complete and accurate ac
to the National Marine Fisheries Service between January 1st, 1997 and date of receipt of the requeste

Delaware River; NMFS/NOAA responses to requests for formal consultation for projects or initiatives that
s concerning Zeenat Mian.
on regarding the LOF designation for the Gulf menhaden (Brevoortia patronus hereinafter "Gulf menhad

ed with the general ledger, documents sufficient to show all funding received by and the current balance

Lehman) regarding same.

E SCOPE OF THE ORIGINAL REQUEST THAT WENT THROUGH NOAA'S ACTING CHIEF OF STAF

[redacted]

coast. Your group may keep historical records. 3) Any proposed grants regarding the development of a f

SDIS-OSP0-2016-0037), located in Suitland, Maryland, as a reasonable accommodation, including all er

our assistance in providing some summaries of regional purse seine log sheet and IFims data to verify s
ng efforts while camera remains attached to the seal - animal selection criteria - camera-obtained data a
outheastern Atlantic snapper-grouper fishery (bottom longline and vertical line). 3. Observer data regardi

s v. Oregon proceeding that relate to salmon and steelhead conversion; - Reports, conclusions, analysi
ccount of the information requested. This is a commercial request. We agree to pay reasonable search a
d information; all National Marine Fisheries Service determinations of non-releasability filed between Ja

would impact the Atlantic sturgeon in the Delaware River; Biological opinions issued by NMFS/NOAA fo

len") purse seine fishery. • All data recorded by independent observers on Gulf menhaden fishing boats

s of the Western Pacific Sustainable Fisheries Fund. 3) To the extent not otherwise produced with the g

F, TROY WILDS.

ilm or tv project surrounding the events described above as much would on be on or near the coast enc

nails, drafted, sent, received, and/or maintained by Janine Herring, Debbie Ferrara, Tahara Dawkins, En

ome of our internal data sources for our vessels. What we are seeking specifically is NMFS-held catch c
availability / publish dates for the public - all research papers / documents related to attachment of exterr
ng the bycatch of sharks, by species, in the Gulf of Mexico reef fish fishery (bottom longline and vertical

s and studies of the rate of salmon and steelhead conversion. “All documents” includes, but is not limite
and reproduction costs; however if these costs exceed $1000, we request that you notify us before repro
nuary 1st, 1997 and date of receipt of the requested information. I request that the records, if available, b

r projects or initiatives that would impact the Atlantic sturgeon in the Delaware River; All reports receive

from 1992 to present. • Any information pertaining to takings of Common Bottlenose Dolphins in and arc

general ledger, documents sufficient to show all expenditures from the Western Pacific Sustainable Fish

[redacted]

ouraging tourism, appreciation and conservation. 4) Any proposed architectural projects in Santa Barbar

nployee Relations, and/or Human Relations from January 1, 2016 to present. •Copies of any and all doc

data for calendar years 2013, 2014, 2015, & 2016 in SKJ, BET, YFT tonnages by species. We are a
nal devices to a Hawaiian monk seal.
line) and the Southeastern Atlantic snapper-grouper fishery (bottom longline and vertical line) and any a

d to, all correspondence, permits, permit applications, agreements, contracts, minutes, memoranda, pla
oducing the documents.
be provided electronically .

d by NMFS of Atlantic sturgeon takes, kills, or injuries within the Delaware River system; and Any and al

ound Barataria Bay. • Visual representations and GPS data on Gulf menhaden landings from recent yea

eries Fund. 4) Documents sufficient to identify who has authority to approve and the procedures for appr

[redacted]

ra county that is artistic in nature in the last 5 years. Could be a sculpture pa

cuments regarding the applications deemed best qualified and referred to the selecting and/or hiring

also looking to sort each year's data by SPTC vessel, month, and EEZ (including the US EEZs and

associated observer reports or characterizations of the f

ns, e-mails, reports, databases, and notes. This request includes all documents that have ever

l NMFS/NOAA comments on environmental assessment

rs. • All reported incidental takings of Common Bottlenose Dolphins around Barataria Bay. • All reported

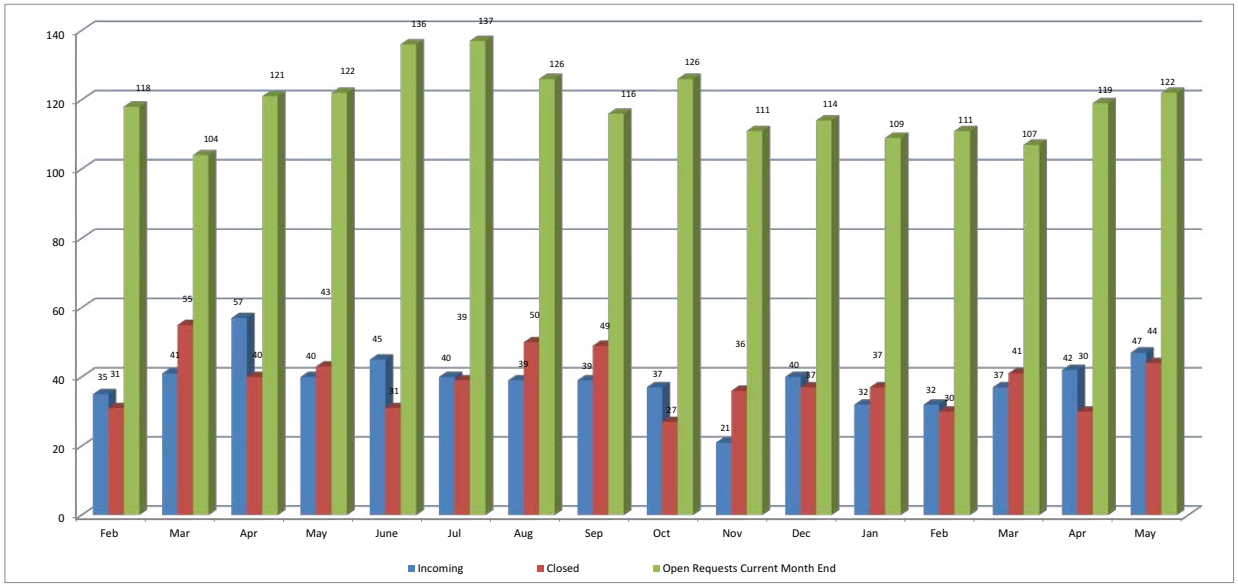
roving expenditures from the Western Pacific Sustainable Fisheries Fund. 5) To th

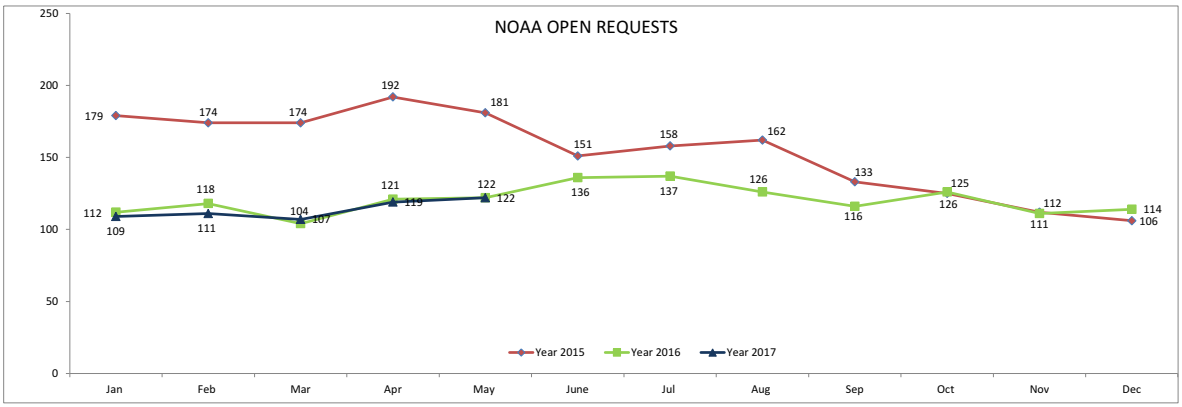
[redacted]

byc

FOIA Monthly Status Report 05-31-2017

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	2	6	5	3	3	1	3	7
CAO	0	0	0	0	0	1	0	1
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	2	0	0	0	0
CIO/FOIA	40	11	11	40	4	1	0	5
GC	2	2	0	4	0	0	0	0
IA	0	0	0	0	0	0	0	0
LA	0	1	0	1	1	0	0	1
NESDIS	16	1	2	15	4	2	0	6
NMFS	13	23	19	17	14	14	3	31
NOS	12	2	1	13	3	2	1	6
NWS	14	0	1	13	4	1	0	5
OAR	1	0	0	1	0	0	0	0
OMAO	0	0	0	0	1	0	0	1
OC	3	0	0	3	1	0	0	1
PPI	0	0	0	0	0	0	0	0
USAO	6	1	4	3	3	0	0	3
WFMO	8	0	1	7	2	1	0	3
NOAA Totals	**119**	**47**	**44**	**122**	**40**	**23**	**7**	**70**




NOAA OPEN REQUESTS
250
200
150
100
50
0
Jan
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Nov
Dec
179
174
174
192
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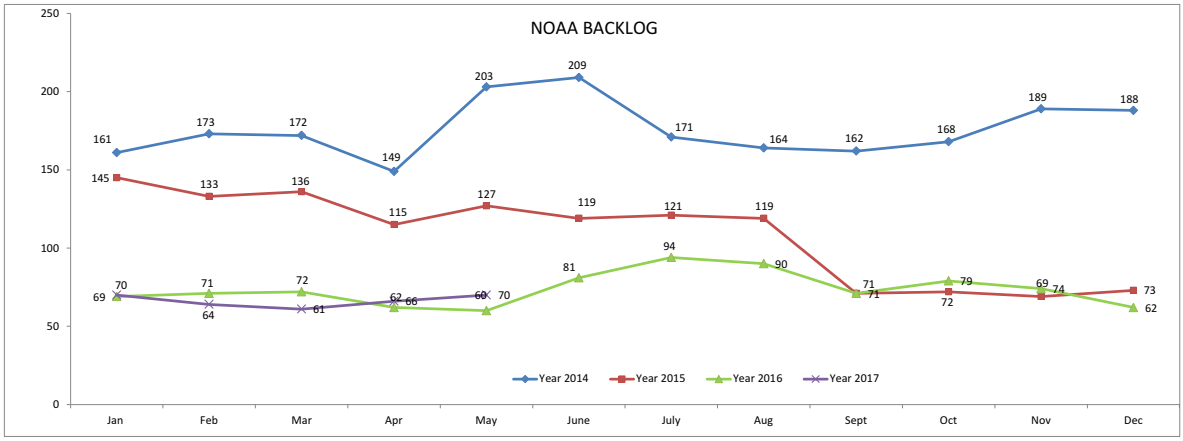
Year 2015
Year 2016
Year 2017


NOAA BACKLOG
250
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Jan
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161
173
172
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71
72
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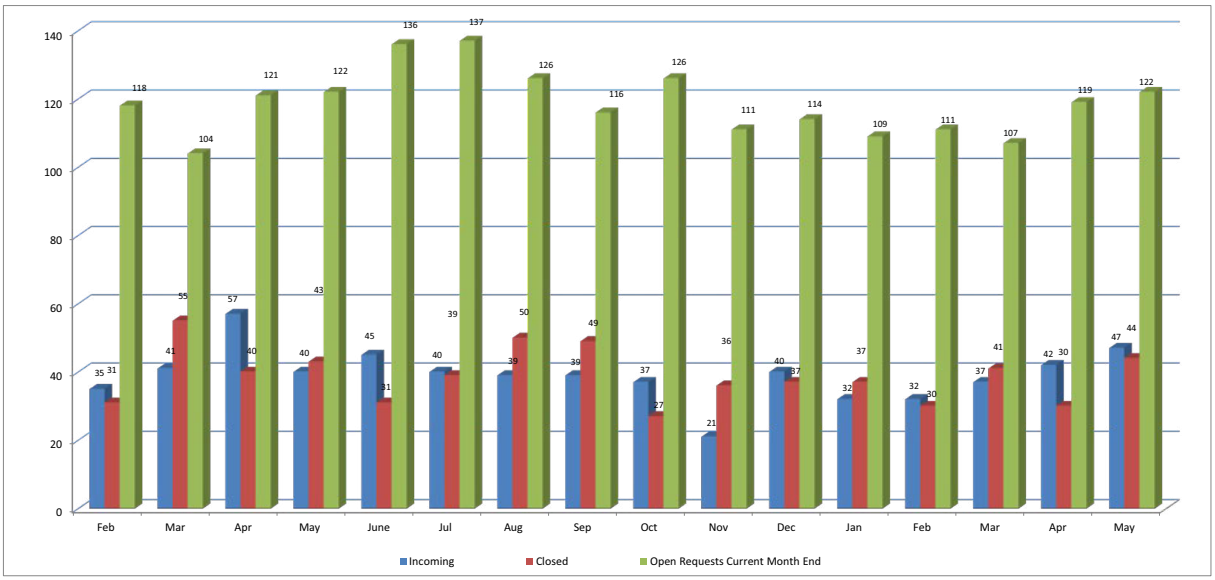
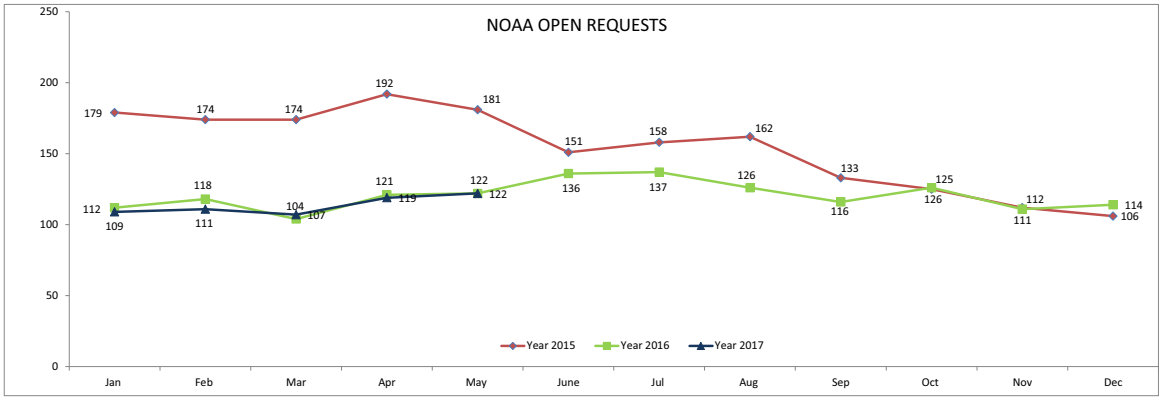
Year 2014
Year 2015
Year 2016
Year 2017

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	2	6	5	3	3	1	3	7
CAO	0	0	0	0	0	1	0	1
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	2	0	0	0	0
CIO/FOIA	40	11	11	40	4	1	0	5
GC	2	2	0	4	0	0	0	0
IA	0	0	0	0	0	0	0	0
LA	0	1	0	1	1	0	0	1
NESDIS	16	1	2	15	4	2	0	6
NMFS	13	23	19	17	14	14	3	31
NOS	12	2	1	13	3	2	1	6
NWS	14	0	1	13	4	1	0	5
OAR	1	0	0	1	0	0	0	0
OMAO	0	0	0	0	1	0	0	1
OC	3	0	0	3	1	0	0	1
PPI	0	0	0	0	0	0	0	0
USAO	6	1	4	3	3	0	0	3
WFMO	8	0	1	7	2	1	0	3
NOAA Totals	**119**	**47**	**44**	**122**	**40**	**23**	**7**	**70**




NOAA OPEN REQUESTS
250
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Jan
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179
174
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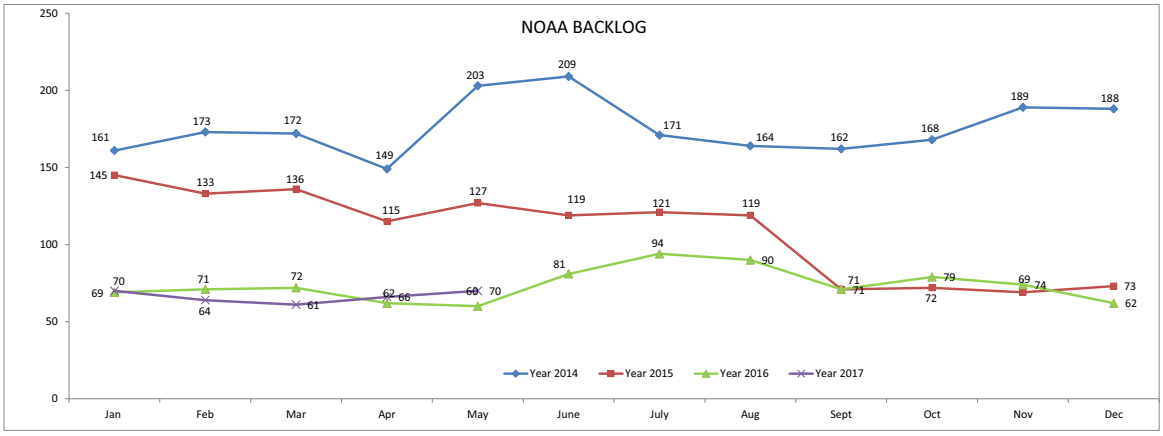
Year 2015
Year 2016
Year 2017


NOAA BACKLOG
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Jan
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81
94
90
71
79
74
62
64
61
Year 2014
Year 2015
Year 2016
Year 2017

Tracking Number	Type	Requester	Requester Organization
DOC-NOAA-2017-001261	Request	Laura E. Nielsen	Riverside Technology, inc.
DOC-NOAA-2017-001259	Request	Laura E. Nielsen	Riverside Technology, inc.
DOC-NOAA-2017-001257	Request	Laura E. Nielsen	Riverside Technology, inc.
DOC-NOAA-2017-001254	Request	Laura E. Nielsen	Riverside Technology, inc.
DOC-NOAA-2017-001252	Request	Karen Markin	
DOC-NOAA-2017-001203	Request	Zeenat Mian	
DOC-NOAA-2017-001275	Request	MICHAEL PEPSON	Cause of Action
DOC-NOAA-2017-001191	Request	Kris Hutchison	Aviation Spectrum Resources, Inc.
DOC-NOAA-2017-001285	Request	Jared S. Goodman	PETA Foundation
DOC-NOAA-2017-001279	Request	Jane Reldan	Seal Conservancy
DOC-NOAA-2017-001267	Request	Raimundo Espinoza	Conservacion ConCiencia
DOC-NOAA-2017-001265	Request	Mirabai H. Galashan	
DOC-NOAA-2017-001264	Request	Mirabai H. Galashan	
DOC-NOAA-2017-001238	Request	Dale Perkins	
DOC-NOAA-2017-001230	Request	Maurice Tamman	Reuters
DOC-NOAA-2017-001219	Request	Nathan Eagle	Honolulu Civil Beat
DOC-NOAA-2017-001217	Request	Nathan Eagle	Honolulu Civil Beat
DOC-NOAA-2017-001200	Request	Meera Gajjar	National Whistleblower Center
DOC-NOAA-2017-001198	Request	Nicholas Fromherz	
DOC-NOAA-2017-001196	Request	Kristen L. Boyles	Earthjustice
DOC-NOAA-2017-001195	Request	David Gotfredson	KFMB CBS News 8
DOC-NOAA-2017-001188	Request	Jordan Waltz	
DOC-NOAA-2017-001179	Request	Eileen L. Morrison	Goodwin Procter LLP
DOC-NOAA-2017-001190	Request	ERIC R. BOLINDER	Cause of Action Institute
DOC-NOAA-2017-001176	Request	John Freitas	
DOC-NOAA-2017-001164	Request	John R. Leek	San Diego Council of Divers
DOC-NOAA-2017-001174	Request	Shellie Harper	South Pacific Tuna Corporation
DOC-NOAA-2017-001175	Request	Zeenat Mian	
DOC-NOAA-2017-001194	Request	ERIC R. BOLINDER	Cause of Action Institute
DOC-NOAA-2017-001192	Request	KENNETH KNOBLOCK	
DOC-NOAA-2017-001130	Request	Nicholas Patton	Delaware Riverkeeper Network
DOC-NOAA-2017-001282	Request	David Petersen	
DOC-NOAA-2017-001263	Request	Laura E. Nielsen	Riverside Technology, inc.
DOC-NOAA-2017-001262	Request	Laura E. Nielsen	Riverside Technology, inc.
DOC-NOAA-2017-001260	Request	Laura E. Nielsen	Riverside Technology, inc.
DOC-NOAA-2017-001258	Request	Laura E. Nielsen	Riverside Technology, inc.
DOC-NOAA-2017-001256	Request	Laura E. Nielsen	Riverside Technology, inc.
DOC-NOAA-2017-001255	Request	Laura E. Nielsen	Riverside Technology, inc.
DOC-NOAA-2017-001218	Request	Nathan Eagle	Honolulu Civil Beat
DOC-NOAA-2017-001210	Request	KC Ashmore	
DOC-NOAA-2017-001181	Request	Eileen L. Morrison	Goodwin Procter LLP
DOC-NOAA-2017-001180	Request	Eileen L. Morrison	Goodwin Procter LLP
DOC-NOAA-2017-001233	Request	Derek Miller	Saving Seafood
DOC-NOAA-2017-001161	Request	Karen MacDonald	
DOC-NOAA-2017-001247	Request	Dan Vergano (Matt Schafer)	BuzzFeed
DOC-NOAA-2017-001163	Request	Jacqueline Iwata	Natural Resources Defense Council
DOC-NOAA-2017-001220	Request	Nathan Eagle	Honolulu Civil Beat

Submitted	Received	Assigned To	Perfected?	Due	Closed Date
05/23/2017	05/24/2017	AGO	Yes	06/22/2017	TBD
05/23/2017	05/24/2017	AGO	Yes	06/22/2017	05/31/2017
05/23/2017	05/24/2017	AGO	Yes	06/22/2017	05/31/2017
05/23/2017	05/24/2017	AGO	Yes	06/22/2017	05/31/2017
05/23/2017	05/23/2017	AGO	Yes	06/22/2017	TBD
05/15/2017	05/15/2017	AGO	Yes	06/20/2017	TBD
05/24/2017	05/24/2017	LA	Yes	07/10/2017	TBD
05/09/2017	05/09/2017	NESDIS	Yes	06/07/2017	TBD
05/30/2017	05/31/2017	NMFS	Yes	06/28/2017	TBD
05/27/2017	05/30/2017	NMFS	Yes	06/28/2017	TBD
05/23/2017	05/24/2017	NMFS	Yes	07/07/2017	TBD
05/23/2017	05/24/2017	NMFS	Yes	06/23/2017	06/01/2017
05/23/2017	05/24/2017	NMFS	Yes	06/23/2017	TBD
05/19/2017	05/19/2017	NMFS	Yes	06/20/2017	TBD
05/18/2017	05/18/2017	NMFS	Yes	06/22/2017	TBD
05/16/2017	05/17/2017	NMFS	Yes	06/20/2017	TBD
05/16/2017	05/17/2017	NMFS	Yes	06/20/2017	TBD
05/11/2017	05/11/2017	NMFS	Yes	06/30/2017	TBD
05/11/2017	05/11/2017	NMFS	Yes	06/16/2017	TBD
05/10/2017	05/11/2017	NMFS	Yes	06/16/2017	TBD
05/10/2017	05/11/2017	NMFS	Yes	06/16/2017	TBD
05/09/2017	05/10/2017	NMFS	Yes	06/16/2017	TBD
05/09/2017	05/09/2017	NMFS	Yes	06/16/2017	TBD
05/09/2017	05/09/2017	NMFS	Yes	06/22/2017	TBD
05/08/2017	05/08/2017	NMFS	Yes	06/06/2017	05/31/2017
05/07/2017	05/08/2017	NMFS	Yes	06/16/2017	TBD
05/05/2017	05/05/2017	NMFS	Yes	06/06/2017	05/31/2017
05/05/2017	05/05/2017	NMFS	Yes	06/05/2017	05/25/2017
05/02/2017	05/02/2017	NMFS	Yes	06/22/2017	TBD
05/02/2017	05/02/2017	NMFS	Yes	06/08/2017	TBD
05/01/2017	05/01/2017	NMFS	Yes	06/16/2017	TBD
05/30/2017	05/30/2017	NOAA FOIA	No	TBD	TBD
05/23/2017	05/24/2017	NOAA FOIA	No	TBD	05/25/2017
05/23/2017	05/24/2017	NOAA FOIA	No	TBD	05/25/2017
05/23/2017	05/24/2017	NOAA FOIA	No	TBD	05/24/2017
05/23/2017	05/24/2017	NOAA FOIA	No	TBD	05/24/2017
05/23/2017	05/24/2017	NOAA FOIA	No	TBD	05/24/2017
05/23/2017	05/24/2017	NOAA FOIA	No	TBD	05/24/2017
05/16/2017	05/17/2017	NOAA FOIA	Yes	06/20/2017	05/24/2017
05/15/2017	05/15/2017	NOAA FOIA	No	TBD	05/22/2017
05/09/2017	05/09/2017	NOAA FOIA	No	TBD	05/18/2017
05/09/2017	05/09/2017	NOAA FOIA	No	TBD	05/18/2017
05/19/2017	05/19/2017	NOS	Yes	06/22/2017	TBD
05/04/2017	05/04/2017	NOS	Yes	06/16/2017	TBD
05/22/2017	05/22/2017	OGC	Yes	06/20/2017	TBD
05/05/2017	05/05/2017	OGC	Yes	06/16/2017	TBD
05/16/2017	05/17/2017	USEC	Yes	06/22/2017	TBD

Status	Dispositions
Assignment Determination	
Closed	Duplicate request
Closed	Duplicate request
Closed	Duplicate request
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Evaluation of Records	
Closed	Full grant
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Closed	Full grant
Research Records	
Closed	Full grant
Closed	Full grant
Assignment Determination	
Assignment Determination	
Assignment Determination	
Initial Evaluation	
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Closed	Other - Publicly available information
Closed	Improper FOIA request for other reason
Closed	Duplicate request
Closed	Duplicate request
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	

Detail
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SC
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SCI
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SCI
REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SC
Proposal titled "Archaeological oceanographic exploration of the Northern Black Sea and Eastern Aegean -- /
- Full and complete content of any and ALL contracts/cooperation agreements/grants signed and dated between H
Pursuant to the FOIA, CoA Institute hereby requests access to the following records for the time period of October
SCOPE CHANGE ON MAY 11, 2017 TO INCLUDE (E-MAILS) Any letters, written records, correspondence (in
On behalf of People for the Ethical Treatment of Animals (PETA), and pursuant to the Freedom of Information Act,
All correspondence (emails, letters, documents) dated between April 1, 2016 and May 27, 2017, composed or rece
We could not find any investigation on the subject in 2016 but we have found an incident that looks like the informa
Transcript of NOAA public meeting September 8, 2016, 5:30-9:30 p.m. Kealakehe High School Cafeteria, 74-5000
Peer review and conflict of interest reports for Tyne, J. A., Pollock, K. H., Johnston, D. W., & Bejder, L. (2014)
I would like some socio-economic data for a racial composition study. Please provide the racial/ethnicity of the follo
This request relates to the Vessel Monitoring System (VMS) that is maintained by the National Marine Fisheries Se
I'd like to request information related to the staff, consultants, and members of the Western Pacific Regional Fishe
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
On NOAA's Marine Mammal Inventory Report, bottlenose dolphins TT860, TT846 AND TT844 are listed as dead v
I would like to request the following documents: A complete necropsy report of MEAOLAMAKANI (NOA0000208),
This request is made to the National Marine Fisheries Service. I request the following: All Records (defined to inclu
Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), CoA Institute hereby requests access to
I need is some information on fish catch per day for U.S. boats in the period between September of 2012 and May
This is to initiate an FOIA request for documents and correspondence sent to and from the South West Office of P
We are preparing for activities in 2018 which are now more firmly established operationally with the completion of a
REVISED SCOPE: All research papers / documents related to attachment of external devices to a Hawaiian monk
Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), CoA Institute hereby requests access to
I am requesting the following documents: 1.) Any and all documents that contain data concerning population surve
Please provide any records/documents/emails/letters/correspondence in the possession of National Marine Fisheri
This is a request under the Freedom of Information Act (5 U.S.C. 552). I request that a copy of the following docum
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133E1
I'd like to request information relating to special funds of the Western Pacific Regional Fishery Management Counc
Monthly Precipitation records for the area of Kaufman County, Texas from the dates of February 1, 2013 until Pres
This request is made to the National Marine Fisheries Service. I request the following: All Records (defined to inclu
This Request is directed to the National Marine Fisheries Service. I request the following: All Records (defined to in
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
Please consider this a request pursuant to FOIA for any and all records requested by Judicial Watch and currently
Please produce the following records in the National Oceanic & Atmospheric Administration’s (NOAA) posses
I'd like to request information related to lobbying by the Western Pacific Regional Fishery Management Council (W

[redacted]
:ITECH Contract DOCDG133E12CQ0021 Task Order 0003, Task Order 0005, AND Task Order 0006 av
ITECH Contract DOCDG133E12CQ0020 Task Order 0007 AND Task Order 0008 awarded to Earth Res
ITECH Contract DOCDG133E10CQ0031 Task Order 0002 and Task Order 0008 awarded to Science ar
:ITECH Contract DOCDG133E10CQ0034 Task Order 0004, Task Order 0002, AND Task Order 0006 av
Archaeological landscape surveys using AUV/ROV and sonar vehicles in the water." Awardee was
MMA and NOAA. - List of all documents and procedures required and mandatory to comply with the MM
31, 2016 to the present: 1. The processing notes for CoA Institute's FOIA request dated October 31, 20
ıcluding but not limited to e-mails), documents and/or reports in whatever form, whether existing in hard
I request copies of all records regarding Permit No. 774, issued to SeaWorld on October 7, 1992, to im
eived by the National Marine Fisheries Service, West Coast Region, in which "Children's Pool&quo
ation the requester is requesting for but it was reported in 2014 and received a Notice of Violation and As
Puohulihuli St., Kailua-Kona, HI 96740
). Abundance and Survival Rates of the Hawai'i Island Associated Spinner Dolphin (Stenella longirostris)
owing fishery participants; 1. Red Snapper IFQ share holders. 2. IFQ dealers. 3. Charterboat/Headboat r
ervice, Office for Law Enforcement and managed by Kelly Spalding (kelly.spalding@noaa.gov/301.427.8
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 prece
ng copies of information as detailed below on behalf of the National Whistleblower Center (NWC), a nor
e mass stranding ("Stranding") of nearly 100 false killer whales at Hog Key, on Florida's southwestern co
e, or materials relating in any way to the management of these lands, including but not limited to conside
vith a note that reads, "report attached." I am requesting a copy of these three reports. Even
rough-toothed dolphin, Sea Life Park Hawaii, died 8/30/1984; A complete necropsy report of I'ANUI HAH
ıde data, information, emails, reports, and comments) received on or after January 29, 2013 from the Ne
o all communications —including, but not limited to, e-mail, instant messaging, Google hangouts or Goo
2013 , if possible without mentioning Boat names...a few boats with the Carol Linda size.
rotected Resources in Long Beach (Ruvelas and Yates) and the San Diego office of the Director of Park
a modified Treaty. Although these preparations may also be impacted by the adoption of a revised conse
seal. ---------- RW71/72 (forme
o all communications—including, but not limited to, e-mail,8 instant messaging, Google hangouts or Goo
ys of the Vaquita 2.) Any and all documents that contain data concerning the by-catch mortalities of Vaq
ies Service or NOAA regarding the Delaware City Refinery (NPDES Permit# DE0000256) that have bee
nent be provided to me: a list of every construction project completed with your agency in the last 20 yea
2CQ0021 Task Order 0006 awarded to I.M. Systems Group, Inc. (IMSG).
2CQ0021 Task Order 0005 awarded to I.M. Systems Group, Inc. (IMSG).
2CQ0020 Task Order 0007 awarded to Earth Resources Technology, Inc. (ERT).
0CQ0031 Task Order 0002 awarded to Science and Technology Corporation (STC).
0CQ0034 Task Order 0006 awarded to Global Science and Technology, Inc.
0CQ0034 Task Order 0002 awarded to Global Science and Technology, Inc.
cil (WPRFMC). Specifically, I'm requesting: 1) The general ledger in the greatest level of detail for the W
ent.(the date this order is being processed). and a Business Record Affidavit for the records being requ
ıde data, information, emails, reports, and comments) received on or after January 29, 2013 from the Ne
nclude data, information, emails, reports, and comments) received on or after January 29, 2013 from the
aff of the National Marine Sanctuary Foundation (https://www.marinesanctuary.org/) regarding the Monte
eridot ship collision of 3/9/2015 in the Houston Ship Channel: 1- Fate and transport forecast for both the
subject to litigation in Judicial Watch, Inc. v. Dep't of Commerce, No. 15-cv-2088. This includes all reco
ssion, custody or control that are referenced in Administration of Coral Reef Resources in the Northwest
PRFMC). Specifically, I'm requesting: 1) Documents sufficient to show the amount of time spent by WP

[redacted]
warded to I.M. Systems Group, Inc. (IMSG). ---------- W
ources Technology, Inc. (ERT). ---------- We are
nd Technology Corporation (STC). ---------- V
warded to Global Science and Technology, Inc. ----------
s Sea Research Foundation, Inc., of Connecticut. Start date, August 1, 2008. Award number NA08OAR4
MPA and ESA. - A copy of each latest officially approved documents and procedures required and mand
016, tracking number DOC-NOAA-2017-000168, and the NOAA Tasker memorandum regarding or relat
copy, stored electronically, or otherwise recorded from the Under Secretary of Commerce for Oceans ar
port the orca Tilikum pursuant to the Marine Mammal Protection Act (MMPA), from July 7, 2014, to the
t; appears in the correspondence.
ssessment in 2016. Requester confirmed that ":...2014 reported incident that was notified in 2016 is the

) Stock. PLoS ONE, 9(1), e86132. http://doi.org/10.1371/journal.pone.0086132. This SAPPHIRE researc
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, lon
name and position of all WPRFMC staff for the 5 years preceding a response to this request. 2) For ea
ding a response to this request, including a cash receipts and disbursements journal, a general journal,
nprofit 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 record
ration of amending, revising, repealing, or replacing the 2016 plans between or among any officer, repre
if they are reports issued by the Navy, since they are in the possession of NOAA they are public record
HAI (NOA0000188), false killer whale, Sea Life Park, died 7/26/1987; A complete necropsy report of MA
ew York State Department of Environmental Conservation about, related to, or concerning the Biological
gle chat messages, text messages, SMS messages, Blackberry messages, Skype messages, handwrit

ks and Recreation. Just during 2017, correspondence concerning placement, fabrication, intent, design,
ervation and management measure in December at the WCPF Commission annual meeting, we are in t
rly RW08) Can you please provide information on the following: - approximate length and weight of RW
ogle chat messages, text messages, SMS messages, Blackberry messages, Skype messages, handwrit
uita in the artisanal fishing fleet in the Sea of Cortez 3.) Any and all documents that contain data derivec
n created/received/sent since September 3, 2015. Thank you.
rs (1997-2017). Please include the name of the contractor that worked on the project, and the amount c

estern Pacific Sustainable Fisheries Fund over the 5 years preceding a response to this request.
ested. I am an attorney, requesting these records for a client.
ew York State Department of Environmental Conservation about, related to, or concerning the Biological
New York State Department of Environmental Conservation about, related to, or concerning the Biolog
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
rds previously produced to Judicial Watch in that litigation and referenced below in my May 16 correspo
Hawaiian Islands, 24 O.L.C. 183, 184 & n.1 (2000). • Memorandum for Randolph Moss, Assistant
RFMC staff on lobbying activities from 2014 to 2017. By lobbying activities, I am referring to any

[redacted]

e are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCD
requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOCDG133
We are requesting information under the Freedom of Information Act for NOAA SCITECH Contract DOC
---------- We are requesting information under the Freedom of Information Act for NOAA SCITECH C
4600534.
atory to comply with the MMPA and ESA.
ed to this request. 2. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tra
nd Atmospheres (former or acting), the Assistant Secretary for Environment Observation and Prediction,
present, excepting correspondence between the agency and PETA, the Animal Welfare Institute, and th

specific case I mention."

ch project sponsored by NOAA and captive dolphin corporation Dolphin Quest is cited in the draft EIS Er
Account Shareholders Additionally please provide the average weight of red snapper caught by the com
gitude, and date for all commercial vessels sailing from Atlantic ports for as far back as data is available
ch person identified, documents sufficient to identify the individual's employment status, including but no
and a general ledger, in the greatest level of detail available without need for redaction. I would like this
regarding the Lacey Act Reward Fund and/ or the Lacey Act Reward Account (hereinafter referred to as
s relating to the facts surrounding the Stranding, including how the event was discovered, the condition c
esentative, or agent of the U.S. Department of Commerce, the National Marine Fisheries Service or NOA
s to be released by NOAA. If you determine that some elements of the reports are exempt from public re
KAPUU'S 86 CALF (NOA0000372), False killer whale, Sea Life Park Hawaii, died 3/2/1988; A complete
Opinion and Biological Monitoring Plan for Indian Point Units 2 and 3.
ten notes, or communications through any other media—sent or received by the following individuals for

of signs for public education concerning La Jolla seals and sea lions. And of public education on the sa
he process of determining fishing days to be procured under the Treaty as well via bi-lateral arrangeme
72 - dimensions and weight of attached camera - camera attachment method used - purpose of the cam
tten notes, or communications through any other media—sent or received by any and all NOAA employe
l from necropsies of any Vaquita porpoise in your agencies' possession either currently or at any time in

of money spent. In order to help you determine my status for the purpose of assessing fees, you should l

I would like this record provided in electronic format; if the information cannot be exported in an Excel c

Opinion and Biological Monitoring Plan for Indian Point Units 2 and 3.
ical Opinion and Biological Monitoring Plan for Indian Point Units 2 and 3.
office of National Marine Sanctuaries and the California Marine Sanctuary Foundation (http://www.califc
air exposure 3 - The environmental impact analysis report of the MTBE air release.
ndence.
Attorney General, Office of Legal Counsel, from John Leshy, Solicitor, Department of the Interior, James
effort to influence legislation or executive action, including indirect or grassroots lobbying. 2) All WPRFM

[redacted]
)G133E12CQ0021 Task Order 0003 awarded to I.M. Systems Group, Inc. (IMSG).
3E12CQ0020 Task Order 0008 awarded to Earth Resources Technology, Inc. (ERT).
:DG133E10CQ0031 Task Order 0008 awarded to Science and Technology Corporation (STC).
Contract DOCDG133E10CQ0034 Task Order 0004 awarded to Global Science and Technology, Inc.

ıcking number DOC-NOAA-2017-000169, and the NOAA Tasker memorandum regarding or related to tl
the Assistant Administrator, National Environmental Satellite, Data & Information Service (NESDIS) (for
eir representatives. This request includes, but is not limited to, memoranda, reports, notes, letters, emai

ıhancing protections for Hawaiian Spinner Dolphins http://www.cio.noaa.gov/services_programs/NOAA_
mercial sector and the average weight of red snapper caught by the recreational sector. This email addı
. I am also requesting a summary of all commercial fishing vessels that should include a count of those
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-deli
; the "Lacey Act Reward Fund" or "Fund"). In particular, I am requesting: a. Any and all documents regar
of the animals, any efforts made to assist the animals, and mortality data. 2. All records relating to any in
AA Fisheries, the U.S. Environmental Protection Agency, as well as documents or communications with:
lease, I request that the exempt material be narrowly redacted, as required by law, and the remainder o
necropsy of KAULANA, (NOA0000204), Bottlenose Dolphin, Sea Life Park Hawaii, died 10/28/1983; A

the time period of April 17, 2017 through April 24, 2017: □ John F. Quinn □ E.F. "Terry" Stockwell III □

me matters by citizen groups and/or California Fish and Wildlife.
nts. With the price of fishing days both under the Treaty and under bi-lateral arrangements being so cos
nera - Camera ownership - length of time it will remain on the seal - camera removal methods - collatera
ees who attended the April 18–20, 2017 NEFMC meetings in their official capacity. The time period for th
the past 4.) Any and all documents that contain data cornering the sex, age, and reproductive populatio

know that I am an individual seeking information for personal use and not for a commercial use. I am wi

r comma-delimited format, please let me know available formats. 2) To the extent not otherwise produc

rniamsf.org/index.html) regarding the Monterey Bay National Marine Sanctuary. We are looking for corr

s Dorskind, General Counsel, National Oceanic and Atmospheric Administration, and Dinah Bear, Gene
IC letters, testimony, or presentations for federal or state legislators, the President, or state governors fo

his request. 3. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tracking
mer or acting), or (2) the Deputy Assistant Administrator of NESDIS, the NESDIS CIO, e.g., Assistant Cl
ls, and other correspondence.

_PRB_COI_Policy_110606.html accessed 10/21//16 "Requires Public Notice For peer reviews of informa
ess will be fine for the response.
vessels in each of the two Atlantic regions by day and region from which they began the trip. I am reque
ual serves as full- or part-time staff. 3) For each staff member identified, documents sufficient to show a
mited format, please let me know available formats. 2) Documents sufficient to identify and describe coc
ding the Fund's creation (including but not limited to the specific information that established the Fund a
vestigation, whether conducted by NMFS or other entities, of the possible cause of the Stranding. This r
Any member of the White House and/or white house staff; b. Any member of the United States Congre
f record be released.
complete necropsy of KILAKILA, (NOA0000222), short-finned pilot whale, Sea Life Park Hawaii, died 7/4

Mark Alexander Matthew McKenzie Terry Alexander Vincent Balzano Mary Beth Nickell-Tooley

tly, we believe it is important that we review our options very carefully. In this regard we are asking for yo
l effects on seal's behaviour while camera is attached - risk level of entanglement for the seal - monitori
his request is April 17, 2017 through April 24, 2017. The list of individuals should include, but not be limit
n distribution of the Vaquita 5.) Any and all depictions of necropsies of the Vaquita whether they be note

lling to pay the appropriate fees for this request up to a maximum of $30. If you estimate that the fees wi

ed with the general ledger, documents sufficient to show all funding received by and the current balance

espondence sent or received between January 1, 2016 and December 31, 2016.

ral Counsel, Council on Environmental Quality, Re: Request for Opinion Regarding Administration of Co
r the 10 years preceding a response to this request. 3) All requests from federal or state legislators for V

[redacted]

number DOC-NOAA-2017-000170, and the NOAA Tasker memorandum regarding or related to this req
hief Information Officer (ACIO/NESDIS) or (2) the NESDIS Deputy CIO, e.g., Deputy Assistant Chief Inf

ation subject to the OMB Bulletin, NOAA will disclose the names of the reviewers and their affiliation in a

sting the data for a far back as the data is available.
ll expenditures or disbursements, including but not limited to salaries, travel expenses, per diem payme
des used in the WPRFMC formal books of accounts, including but not limited to the organization, fund, p
s a lawful entity within the Department of Commerce and/ or the National Marine Fisheries Service. b. T
request includes, but is not limited to, records regarding analysis of tissue samples reportedly taken by N
ss and/or congressional staff; c. Any officer, representative, or agent of the United States Department o

4/1979

y □ Mark Gibson □ Eric Reid □ Rick Bellavance □ David E. Pierce □ Michael Sissenwine □ Elizabeth E

our assistance in providing some summaries of regional purse seine log sheet and IFims data to verify s
ng efforts while camera remains attached to the seal - animal selection criteria - camera-obtained data a
ed to: □ John Bullard □ Michael Pentony □ Elizabeth Chilton □ Amy Martins □ J. Michael Lanning □ Jo
s, sketches, photographs, or video or audio recordings 6.) Any and all communications, both internally v

ill exceed this limit, please inform me first. I also include a telephone number at which I can be contacte

s of the Western Pacific Sustainable Fisheries Fund. 3) To the extent not otherwise produced with the g

ral Reef Resources in the Northwest Hawaiian Islands (June 30, 2000). • Letter for Randolph Moss, As
WPRFMC to provide testimony, commentary, or technical or factual presentations about WPRFMC activ

uest. 4. All communications—including, but not limited to, e-mail,5 instant messaging, Google hangouts
ormation Officer (DCIO/NESDIS) (former or acting) to the National Telecommunications and Informatio

report of findings and conclusions prepared by the peer reviewers. The report will be posted on the Dep

nts, bonuses, and reimbursed expenses, made by WPRFMC to that person over the 2 years preceding
program, project-task, and object class codes. 3) Any handbook, manual, policies, or guidance used by
he Fund's annual budget (including all income, all expenses, and all payments for FY2012, FY2013, FY
NMFS scientists from some of the dead animals. 3. All records regarding any marine oil and gas activitie
f Justice (DOJ); d. Any officer, representative, or agent of the Association of O&C Counties, Americ

trie John Pappalardo Douglas Grout Peter T. Kendall Mark Godfory Thomas A. Nies Chris

ome of our internal data sources for our vessels. What we are seeking specifically is NMFS-held catch
availability / publish dates for the public - all research papers / documents related to attachment of exterr
n Hare Moira Kelly Carrie Nordeen
within your agency or with any other entity or individual, that describe, propose, or analyze recovery prog

d if necessary to discuss any aspect of my request.

general ledger, documents sufficient to show all expenditures from the Western Pacific Sustainable Fish

sistant Attorney General, Office of Legal Counsel, from James Dorskind, General Counsel, NOAA (July
vities for the 10 years preceding a response to this request. 4) Any notices from WPRFMC to NOAA Reg

[redacted]

or Google chat messages, text messages, SMS messages, Blackberry messages, Skype messages, h
n Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or opera

partment of Commerce Information Quality web site (http://www.osec.doc.gov/cio/oipr/info_qual.html). “ T

a response to this request. 4) Documents sufficient to identify the name of each WPRFMC Council mem
or used to train accounting staff that concerns entering data into the WPRFMC formal books of accounts
2014, FY2015, and FY2016). We request that all incoming funds and rewards paid, if applicable, be ider
s, including both exploratory activities and active production, near the site of the Stranding from January
can Forest Resource Council, Zuber & Sons Logging, Turner Logging, and/or any officer, represent

stopher Kellogg Sandra Stone Janice Plante Andrew Applegate Michelle Bachman Deirdre B

data for calendar years 2013, 2014, 2015, & 2016 in SKJ, BET, YFT tonnages by species. We are a
nal devices to a Hawaiian monk seal.

rams for the Vaquita including but not limited to; efforts to reduce by-catch mortalities, habitat restoratior

eries Fund. 4) Documents sufficient to identify who has authority to approve and the procedures for appr

24, 2000).
gional Counsel regarding contact with federal or state legislators or testimony before legislative committe

[redacted]

andwritten notes, or communications through any other media—between NOAA and the Office of the W
tional considerations in the 1675 – 1680 MHz or 1675-1695 MHz radio frequency bands, specifically tho

This link has been inoperable on repeated attempts to access it between 8/27/16 per NOAA_PRB_COI_

nber for the 2 years preceding a response to this request. 5) For each Council member
s. 4) To the extent not otherwise disclosed with the formal books of accounts, document
ntified for each enforcement action. c. Any rules/ regulations/ guidance documents regarding
9, 2017 until January 14, 2017. For purposes of this request, “near
ative, or agent of a private company or trade association; e. Any officer, representative, or agent of

oelke □ Jamie Cournane □ Rachel Feeney □ Lou Goodreau □ Demet Haksever □ Fiona Hogan □ Jona

also looking to sort each year's data by SPTC vessel, month, and EEZ (including the US EEZs and

n, or ex-situ maintenance of any kind 7.) Any and all documents tha

roving expenditures from the Western Pacific Sustainable Fisheries Fund. 5) To th

ees for the 10 years preceding a response to this request. 5) All WPRFMC Forms SF

[redacted]

/hite House Counsel concerning or re

-

athon Peros □ Naresh Pradhan □ Rob

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, June 7, 2017 1:20 PM
To: 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
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
Subject: 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

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 (O)
(b)(6) [redacted] (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.

BRIAN J. STRETCH (CABN 163973)
United States Attorney
SARA WINSLOW (DCBN 457643)
Chief, Civil Division
ROBIN M. WALL (CABN 235690)
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

Attorneys for Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

OUR CHILDREN'S EARTH FOUNDATION, *et al*, Plaintiffs, v. NATIONAL MARINE FISHERIES SERVICE, *et al.*, Defendants.	CASE NO. 14-cv-01130 WHO CASE NO. 14-cv-04365 WHO **NOTICE OF APPEAL**

NOTICE OF APPEAL

Notice is hereby given that the National Marine Fisheries Service, defendant, in the above named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from an order of the District Court of the Northern District of California entered in this case on March 1, 2017, granting in part and denying in part plaintiffs' motion for attorney's fees. ECF 103. The District Court entered judgment awarding attorney's fees and costs to plaintiffs on April 3, 2017. ECF 108.

The award of attorney's fees and costs was made in two related actions, Case Nos. 14-cv-01130-WHO and 14-cv-04365-WHO, and defendant is appealing in both actions.

Pursuant to Ninth Circuit Rule 3-2(b), a Representation Statement is attached to this notice.

Dated: June 2, 2017

BRIAN J. STRETCH
United States Attorney

/s/ *Robin M. Wall*

ROBIN M. WALL
Assistant United States Attorney
Attorneys for Defendant

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 monum

I am requesting annual reports from the NOAA Office of Law Enforcement's Northeast Division regarding the total

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of: I am s

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) Papahanaumokuakea Marine National Monument Exp
nt 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 inc
port the orca Tilikum pursuant to the Marine Mammal Protection Act (MMPA), from July 7, 2014, to the p

ɔansion (01/01/14 – 12/31/16) Pacific Remote Islands Marine National Monument Expansion (01/01/12 -
ɔ 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
ɔresent, 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 N
/. I prefer that these records be delivered to me in an electronic format.
:d that this person, Michael Potochney, started on February 6, 2017. I don't believe this job vacancy was
eir 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
ls, and other correspondence.

From: Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>
Sent: Thursday, June 8, 2017 3:46 PM
To: Mark Graff - NOAA Federal
Subject: Fwd: FW: Out of Office Re: NRDC FOIA Case
Attachments: NRDC v. EPA_ Complaint.pdf

Mark - (b)(5) [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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---------- Forwarded message ----------
From: **Caroline Park - NOAA Federal** <caroline.park@noaa.gov>
Date: Thu, Jun 8, 2017 at 3:02 PM
Subject: Fwd: FW: Out of Office Re: NRDC FOIA Case
To: Stacey Nathanson <stacey.nathanson@noaa.gov>, John Almeida - NOAA Federal <john.almeida@noaa.gov>, Adam Issenberg <adam.issenberg@noaa.gov>, "Rod.Vieira (NOAA GC)" <rod.vieira@noaa.gov>

Hi Stacey and John,

(b)(5) [redacted]?

:) C

---------- Forwarded message ----------
From: **Poscablo, Christine (USANYS)** <Christine.Poscablo@usdoj.gov>
Date: Thu, Jun 8, 2017 at 1:54 PM
Subject: RE: FW: Out of Office Re: NRDC FOIA Case
To: "Rod.Vieira (NOAA GC)" <rod.vieira@noaa.gov>, "caroline.park@noaa.gov" <caroline.park@noaa.gov>,

"leila.afzal@noaa.gov" <leila.afzal@noaa.gov>

Great – thanks, Rod. Here is the complaint.

From: Rod.Vieira (NOAA GC) [mailto:rod.vieira@noaa.gov]
Sent: Thursday, June 08, 2017 10:39 AM
To: Poscablo, Christine (USANYS) <CPoscablo@usa.doj.gov>; caroline.park@noaa.gov; leila.afzal@noaa.gov
Subject: Re: FW: Out of Office Re: NRDC FOIA Case

Hi Christine,

(b)(5) [redacted]. Thanks.

-Rod

On 6/7/2017 2:54 PM, Poscablo, Christine (USANYS) wrote:

All:

(b)(5) [redacted]?

Thanks very much.

Christine

Christine S. Poscablo

Assistant United States Attorney

86 Chambers Street, 3rd Floor

New York, New York 10007

Tel: 212.637.2674

Fax: 212.637.2702

Email: christine.poscablo@usdoj.gov

From: Sean Roberts - NOAA Federal [mailto:sean.m.roberts@noaa.gov]
Sent: Wednesday, June 07, 2017 2:50 PM
To: Poscablo, Christine (USANYS) <CPoscablo@usa.doj.gov>
Subject: Out of Office Re: NRDC FOIA Case

Thank you for your email. I am currently on extended leave and am scheduled to be out of the office through July 4, returning Wednesday, July 5. I will respond to your email as soon as I can.

In the meantime, if you need assistance on a fisheries matter, please contact Caroline Park at caroline.park@noaa.gov or 301-713-9675; a protected resources matter, please contact Rod Vieira at rod.vieira@noaa.gov or 301-713-9680; or a fisheries finance matter, please contact Leila Afzal at leila.afzal@noaa.gov or 301-713-9660.

Thank you,

Sean

--

Sean Roberts
Attorney-Advisor
NOAA Office of the General Counsel
Fisheries and Protected Resources Section
U.S. Department of Commerce
Phone: (301) 713-9697

Email: Sean.M.Roberts@noaa.gov

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--
Caroline Park
Deputy Section Chief, Fisheries and Protected Resources Section
NOAA Office of General Counsel
U.S. Department of Commerce
Phone: (301) 713-9675
Fax: (301) 713-0658

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

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[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.

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[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

Vivian H.W. Wang
Natural Resources Defense Council
40 West 20th Street
New York, NY 10011
Tel.: (212) 727-4477
Fax: (212) 795-4799
vwang@nrdc.org
Counsel for Plaintiff

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 records[1] 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.
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- *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 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 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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[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 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 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.

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[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

NRDC

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 records[1] 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 Amoore, 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).

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[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

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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

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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 FDA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. 21 C.F.R. § 20.46(b)(4).

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); 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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[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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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).

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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)

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[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

NRDC

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 records[1] 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).

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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 Commercer'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.

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[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

NRDC

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 records[1] 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).

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 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

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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).

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) (according media requester status to the ACLU).[3]

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[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 ×

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

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)

Attachment F

SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:

Dionne Hardy, FOIA Officer
Office of Management + Budget
725 17th St. NW, Room [illegible]
Washington, DC 20503

9590 9403 0406 5163 9205 75

2. [illegible] (Transfer from service label)
7016 1970 0000 2348 6185

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) DIONNE HARDY
C. Date of Delivery 01/12/17

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

WHITE HOUSE MAIL ENTRANCE STATION WASHINGTON, DC 20500 [illegible] 0 201[illegible]

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

UNITED STATES POSTAL SERVICE

CAF DISTRICT
MD 207
10 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 records[1] 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).

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- 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);
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- 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).

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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 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 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.

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[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 records[1] 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).

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(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.

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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 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 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.

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[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

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 records[1] 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);
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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.

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[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
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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 records[1] 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.

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[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).

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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 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 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]

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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.

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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
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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 records[1] 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.

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[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 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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- 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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- 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).

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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 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 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.

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[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 records[1] 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

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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).

(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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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

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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).

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 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 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.

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[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 records[1] 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

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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 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).

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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); 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 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 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)

From: Karen Robin - NOAA Federal <karen.robin@noaa.gov>
Sent: Thursday, June 8, 2017 1:56 PM
To: Mark Graff - NOAA Federal
Subject: RE: Your FOIA request - 001021
Attachments: DOC-NOAA-2017-001021 (final response).docx

Here's my draft so you have the whole thing in hand.
(b)(5) [redacted].

—
Karen Robin, writer-editor
NOAA Workforce Management Office
Silver Spring, MD • (301) 713-6361

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Thursday, June 08, 2017 1:50 PM
To: Karen Robin - NOAA Federal
Subject: Re: Your FOIA request - 001021

(b)(5) [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 Thu, Jun 8, 2017 at 1:33 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Mark,

(b)(5) [redacted]

[redacted]

Please don’t bother to call — our phones have been squirrely all week.

Thank you!
Karen

—

Karen Robin
FOIA Liaison
NOAA’s Workforce Management Office
Silver Spring, MD ● (301) 713-6361

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Wednesday, June 07, 2017 7:08 AM
To: Karen Robin - NOAA Federal
Subject: Re: Your FOIA request - 001021

Hi Karen--

I also haven't been able to get a reply or follow up on this action. I'm not sure what the delay is.

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 Tue, Jun 6, 2017 at 6:10 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Mark,

(b)(5) [redacted]

[redacted].

Thank you very much,
Karen

—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD ● (301) 713-6361

From: Karen Robin - NOAA Federal [mailto:karen.robin@noaa.gov]
Sent: Tuesday, May 30, 2017 9:32 AM
To: Mark Graff - NOAA Federal
Subject: RE: Your FOIA request - 001021

Thanks, Mark, for this as well as your earlier reply.

—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD ● (301) 713-6361

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Tuesday, May 30, 2017 9:12 AM
To: Lisa Love - NOAA Federal
Cc: Karen Robin - NOAA Federal; Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Fwd: Your FOIA request - 001021

Good Morning Lisa,

(b)(5) [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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---------- Forwarded message ----------
From: **Karen Robin - NOAA Federal** <karen.robin@noaa.gov>
Date: Tue, May 23, 2017 at 2:16 PM
Subject: RE: Your FOIA request - 001021
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Lisa Love - NOAA Federal <lisa.love@noaa.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

FYI:

(b)(5) [redacted]

[redacted]."

Further than that, please call to discuss.

—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • (301) 713-6361

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Tuesday, May 23, 2017 11:55 AM
To: Karen Robin - NOAA Federal; Lisa Love - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Fwd: Your FOIA request - 001021

Good Morning,

(b)(5) [redacted]

(b)(5)
[redacted] Please let me know anything you need to advance the response for this request.

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: **Robert Swisher - NOAA Federal** <robert.swisher@noaa.gov>
Date: Tue, May 23, 2017 at 10:12 AM
Subject: Fwd: Your FOIA request - 001021
To: Mark Graff - NOAA Affiliate <mark.graff@noaa.gov>

Per our discussion. Thanks.

---------- Forwarded message ----------
From: **Richard Hirn** <richard@hirnlaw.com>
Date: Tue, May 23, 2017 at 10:01 AM
Subject: Fwd: Your FOIA request - 001021
To: robert.swisher@noaa.gov

Dear Mr. Swisher:

The response to this request is overdue. Ms. Robin informs me that her POC at NWS has not turned over the information because they have not been "given the go ahead" or "clearance" from someone in authority at the NWS. The list of vacant positions is a politically sensitive issue- the NWS has been trying to hide the actual number of vacancies- in fact, the NWS Director has lied publicly about the number of vacant positions in the NWS (his numbers are inconsistent with the numbers provided in response to earlier FOIA requests and the President's FY 2017 budget submission). Holding back the information requested is not an option for the NWS, although they seem to think that it is. Might I please have an immediate response so that I do not need to file suit in U.S. District Court to make the agency comply?

Thanking you in advance.

Richard J. Hirn
General Counsel
National Weather Service Employees Organization

Begin forwarded message:

From: "foia@noaa.gov" <foia@noaa.gov>
Subject: Your FOIA request – 001021
Date: April 26, 2017 at 2:57:38 PM EDT
To: "richard@hirnlaw.com" <richard@hirnlaw.com>

04/26/2017 02:56 PM
FOIA Request: DOC-NOAA-2017-001021

Dear Mr. Hirn,

Please read the accompanying letter. A copy will follow via the U.S. Postal Service.

Yours truly,
Karen

—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD ● (301) 713-6361

--

Rob Swisher
Director, Governance and Portfolio Division

NOAA OCIO

301-628-5755
240-723-5284

(b)(5)

(b)(5)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, June 8, 2017 4:26 PM
To: Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal; Robert Hogan
Cc: Lola Stith - NOAA Affiliate; Stacey Nathanson - NOAA Federal
Subject: Fwd: FW: Out of Office Re: NRDC FOIA Case
Attachments: Transition Summary Report 06-7-2017 - NOAA Update.docx; NOAA Transition Team FOIA (4).pdf; NRDC v. EPA_ Complaint.pdf

Hey Guys,

It looks like NRDC filed suit (attached) on one of these Trump Transition-related FOIA requests (also attached). In this one, (b)(5) [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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---------- Forwarded message ----------
From: **Mark Graff - NOAA Federal** <mark.graff@noaa.gov>
Date: Thu, Jun 8, 2017 at 4:11 PM
Subject: Re: FW: Out of Office Re: NRDC FOIA Case
To: Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>

Yes--I'm familiar with this request. (b)(5) [redacted]

[redacted].

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

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On Thu, Jun 8, 2017 at 3:46 PM, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov> wrote:

Mark - (b)(5) [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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---------- Forwarded message ----------
From: **Caroline Park - NOAA Federal** <caroline.park@noaa.gov>
Date: Thu, Jun 8, 2017 at 3:02 PM
Subject: Fwd: FW: Out of Office Re: NRDC FOIA Case
To: Stacey Nathanson <stacey.nathanson@noaa.gov>, John Almeida - NOAA Federal <john.almeida@noaa.gov>, Adam Issenberg <adam.issenberg@noaa.gov>, "Rod.Vieira (NOAA GC)" <rod.vieira@noaa.gov>

Hi Stacey and John,

(b)(5) [redacted]?

:) C

---------- Forwarded message ----------
From: **Poscablo, Christine (USANYS)** <Christine.Poscablo@usdoj.gov>
Date: Thu, Jun 8, 2017 at 1:54 PM
Subject: RE: FW: Out of Office Re: NRDC FOIA Case
To: "Rod.Vieira (NOAA GC)" <rod.vieira@noaa.gov>, "caroline.park@noaa.gov" <caroline.park@noaa.gov>, "leila.afzal@noaa.gov" <leila.afzal@noaa.gov>

Great – thanks, Rod. Here is the complaint.

From: Rod.Vieira (NOAA GC) [mailto:rod.vieira@noaa.gov]
Sent: Thursday, June 08, 2017 10:39 AM
To: Poscablo, Christine (USANYS) <CPoscablo@usa.doj.gov>; caroline.park@noaa.gov; leila.afzal@noaa.gov
Subject: Re: FW: Out of Office Re: NRDC FOIA Case

Hi Christine,

(b)(5) [redacted]. Thanks.

-Rod

On 6/7/2017 2:54 PM, Poscablo, Christine (USANYS) wrote:

> All:
>
> (b)(5) [redacted]?
>
> Thanks very much.

Christine

Christine S. Poscablo

Assistant United States Attorney

86 Chambers Street, 3rd Floor

New York, New York 10007

Tel: 212.637.2674

Fax: 212.637.2702

Email: christine.poscablo@usdoj.gov

From: Sean Roberts - NOAA Federal [mailto:sean.m.roberts@noaa.gov]
Sent: Wednesday, June 07, 2017 2:50 PM
To: Poscablo, Christine (USANYS) <CPoscablo@usa.doj.gov>
Subject: Out of Office Re: NRDC FOIA Case

Thank you for your email. I am currently on extended leave and am scheduled to be out of the office through July 4, returning Wednesday, July 5. I will respond to your email as soon as I can.

In the meantime, if you need assistance on a fisheries matter, please contact Caroline Park at caroline.park@noaa.gov or 301-713-9675; a protected resources matter, please contact Rod Vieira at rod.vieira@noaa.gov or 301-713-9680; or a fisheries finance matter, please contact Leila Afzal at leila.afzal@noaa.gov or 301-713-9660.

Thank you,

Sean

--

Sean Roberts
Attorney-Advisor
NOAA Office of the General Counsel
Fisheries and Protected Resources Section
U.S. Department of Commerce
Phone: (301) 713-9697
Email: Sean.M.Roberts@noaa.gov

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--

Caroline Park
Deputy Section Chief, Fisheries and Protected Resources Section
NOAA Office of General Counsel
U.S. Department of Commerce
Phone: (301) 713-9675
Fax: (301) 713-0658

NRDC

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 records[1] 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).

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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); 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 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 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 Commercer'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.

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[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)

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

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[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.

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[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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Counsel for Plaintiff

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 records[1] 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).

(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 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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[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 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 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.

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[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
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415-875-6184

Enclosures (sent via FOIA Online):

Attachments 1 through 42 (single .pdf file)

Attachment B

NRDC

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 records[1] 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 Amoore, 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).

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[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.
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(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).

(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 FDA and the communications between the President-elect's transition team and FDA 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 FDA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. 21 C.F.R. § 20.46(b)(4).

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); 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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[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).

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 FDA 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 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)

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[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

NRDC

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 records[1] 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).

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(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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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).

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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); 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 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 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 Commercer'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.

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[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

NRDC

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 records[1] 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).

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).

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[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 ×

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

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)

Attachment F

SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:

Dionne Hardy, FOIA Officer
Office of Management + Budget
725 17th St. NW, Room [illegible]
Washington, DC 20503

9590 9403 0406 5163 9205 75

2. [illegible] (Transfer from service label)
7016 1970 0000 2348 6185

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) DIONNE HARDY
C. Date of Delivery 01/12/17

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

WHITE HOUSE MAIL ENTRANCE STATION WASHINGTON, DC 20500 [illegible] 0 201[illegible]

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

UNITED STATES POSTAL SERVICE

CAF DISTRICT
MD 207
10 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 records[1] 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);
- 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).

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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 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 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.

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[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 records[1] 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).

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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:

(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).

(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).

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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 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 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.

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[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

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 records[1] 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

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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).

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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.

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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 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 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.

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[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 records[1] 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.

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[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

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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.

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[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 records[1] 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.

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[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).

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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 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 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.

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[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.
111 Sutter St., 21st Floor
San Francisco, CA 94104
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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 records[1] 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:

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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).

(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 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

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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).

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 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 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.

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[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 records[1] 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).

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(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).

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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); 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 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 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)

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(b)(5)

(b)(5)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, December 27, 2017 7:46 AM
To: Robert Hembrook - NOAA Federal; Chi Kang - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Fwd: Kleinman_DOC-OS-2018-000264: Second Amended Fee Estimate Tasker
Attachments: Kleinman_DOC-OS-2018_000264_Second Amended Fee Estimate Tasker.docx

Hey Robert/Chi,

It looks like we got a FOIA request that falls under your shop (b)(5) [redacted]

[redacted].

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

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---------- Forwarded message ----------
From: **Khalid, Sulma (Contractor)** <SKhalid@doc.gov>
Date: Tue, Dec 26, 2017 at 11:03 AM
Subject: Kleinman_DOC-OS-2018-000264: Second Amended Fee Estimate Tasker
To: "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>, "Fletcher, Catherine" <catherine.fletcher@nist.gov>, "Boston, Edgar" <Edgar.Boston@uspto.gov>, "Boston, Louis" <Louis.Boston@uspto.gov>, "Parsons, Bobbie (Federal)" <bParsons@doc.gov>
Cc: "Stith, Lola (Contractor)" <Lola.M.Stith@noaa.gov>, "Reinhart, Liz" <elizabeth.reinhart@nist.gov>

Good Morning,

Please be advised that the subject FOIA requester has sought to further narrow the scope of her request in order to limit the search and review costs associated with her request. She has restated her request as follows:

1. All communications between Safra Catz or someone with @oracle.com domain name and Wilbur Ross and/or his staff; and
2. All communications with Safra Catz or someone with @oracle.com domain name related to May 11, 2017 Presidential Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure.

I have closed out your previous fee estimate taskers in FOIAOnline on your behalf, and re-tasked your bureau with the new tasker. I have also attached the new tasker here for your convenience.

Please conduct another fee estimate utilizing this restatement of the request. If you find that this version would again result in an exorbitant fee estimate, please suggest ways in which the requester could further narrow her search terms and I will communicate those suggestions to her. Feel free to contact me if you have any questions & many thanks for your continued efforts with this request!

Regards,

Sulma

Sulma Khalid

FOIA/PA Analyst (Contractor)

U.S. Department of Commerce

Office of Privacy and Open Government

Phone Number: (202) 482-7432

Email: skhalid@doc.gov

December 26, 2017

MEMORANDUM FOR: Catherine Fletcher, NIST
Mark Graff, NOAA
Jamie Boston, PTO
Bobbie Parsons, IOS

FROM: Michael Toland, Ph.D.
Deputy Chief FOIA Officer
Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Request
Kleinman- DOC-OS-2018-000264

The Department has received a Freedom of Information Act (FOIA) request. We have been corresponding with the requester to narrow the scope of her request. The first and second versions of her request resulted in exorbitant fee estimates. She therefore narrowed her request to seek the following:

1. All communications between Safra Catz or someone with @oracle.com domain name and Wilbur Ross and/or his staff; and
2. All communications with Safra Catz or someone with @oracle.com domain name related to May 11, 2017 Presidential Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure.

Please conduct a fee estimate for the above information.

- The chargeable services for "Commercial" are search, review and duplication.
- The chargeable services for "Media, Educational, and/or Non-commercial Scientific Institution" are duplication, excluding the first 100 pages.
- The chargeable services for "Other" are search and duplication, excluding the first two hours of search and the first 100 pages.

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

Please determine the fee estimate with respect to responsive documents located within your office. **DO NOT SEARCH YET**. Rather, we need an **ESTIMATE** from you as to how many hours/pages you may locate for this request. **This is only a good faith estimate, you should not search in order to come up with the estimate**. Also, a search need not actually find documents in order to be chargeable, so long as,

at the outset, there is a reasonable likelihood that there may be responsive documents, and the search is conducted with due diligence.

Please fill in the applicable information and return this sheet by C.O.B. December 29, 2017 to: Sulma Khalid, FOIA Analyst, Office of Privacy and Open Government, Room 52010FB, Washington, D.C. 20230, Telephone – 202-482-7432, e-mail – skhalid@doc.gov**.**

For documents responsive under the Freedom of Information Act:

Computer Search (Complete if necessary.)

Total estimated cost for duplication in electronic version (cost of disc or CD). _____

Total estimated hours of time for electronic search. _____

Total estimated dollar amount for electronic search. _____

Total estimated hours for review. _____

Total estimated dollar amount for review. _____

Manual Search (Complete if necessary.)

Total estimated number of pages of documents. _____

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Total estimated hours for search. _____

Total estimated dollar amount for search. _____

Total estimated hours for review. _____

Total estimated dollar amount for review. _____

This information is needed to compute a total "OS" fee estimate for the requester.

No records. _____

_____	_____	_____
Signature (Senior Official)	Bureau	Date

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, December 28, 2017 11:43 AM
To: Lola Stith - NOAA Affiliate
Subject: Fwd: Kleinman_DOC-OS-2018-000264: Second Amended Fee Estimate Tasker
Attachments: Kleinman_DOC-OS-2018_000264_Second Amended Fee Estimate Tasker.docx

(b)(5) [redacted].

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

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Date: Wed, Dec 27, 2017 at 7:46 AM
Subject: Fwd: Kleinman_DOC-OS-2018-000264: Second Amended Fee Estimate Tasker
To: Robert Hembrook - NOAA Federal <robert.hembrook@noaa.gov>, Chi Kang - NOAA Federal <chi.y.kang@noaa.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Hey Robert/Chi,

(b)(5) [redacted]

[redacted].

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

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Cc: "Stith, Lola (Contractor)" <Lola.M.Stith@noaa.gov>, "Reinhart, Liz" <elizabeth.reinhart@nist.gov>

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Regards,

Sulma

Sulma Khalid

FOIA/PA Analyst (Contractor)

U.S. Department of Commerce

Office of Privacy and Open Government

Phone Number: **(202) 482-7432**

Email: **skhalid@doc.gov**

December 26, 2017

MEMORANDUM FOR: Catherine Fletcher, NIST
Mark Graff, NOAA
Jamie Boston, PTO
Bobbie Parsons, IOS

FROM: Michael Toland, Ph.D.
Deputy Chief FOIA Officer
Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Request
Kleinman- DOC-OS-2018-000264

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2. All communications with Safra Catz or someone with @oracle.com domain name related to May 11, 2017 Presidential Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure.

Please conduct a fee estimate for the above information.

- The chargeable services for "Commercial" are search, review and duplication.
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Type	Grade	Hourly Rate
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Please determine the fee estimate with respect to responsive documents located within your office. **DO NOT SEARCH YET**. Rather, we need an **ESTIMATE** from you as to how many hours/pages you may locate for this request. **This is only a good faith estimate, you should not search in order to come up with the estimate**. Also, a search need not actually find documents in order to be chargeable, so long as,

at the outset, there is a reasonable likelihood that there may be responsive documents, and the search is conducted with due diligence.

Please fill in the applicable information and return this sheet by C.O.B. December 29, 2017 to: Sulma Khalid, FOIA Analyst, Office of Privacy and Open Government, Room 52010FB, Washington, D.C. 20230, Telephone – 202-482-7432, e-mail – skhalid@doc.gov**.**

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Total estimated hours for search. _____

Total estimated dollar amount for search. _____

Total estimated hours for review. _____

Total estimated dollar amount for review. _____

This information is needed to compute a total "OS" fee estimate for the requester.

No records. _____

_____	_____	_____
Signature (Senior Official)	Bureau	Date

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, June 13, 2017 8:57 AM
To: Scott Smullen - NOAA Federal; Robert Moller - NOAA Federal; Troy Wilds - NOAA Federal
Cc: Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal; Lola Stith - NOAA Affiliate; Robert Hogan; Rodney Vieira - NOAA Federal; Keith Hagg - NOAA Federal
Subject: NRDC v. NOAA FOIA Litigation
Attachments: NOAA RESPONSE_2017-000362 Input Memo Transition Request-NOAA mhg signed.pdf; NRDC v. EPA_ Complaint.pdf; FOIA DOC-NOAA-2017-000362 tasker signed (3).pdf; GC approval.pdf; FOIA Search Log- Michael Best DOC-OS-2017-000308.docx

Good Morning,

You had each asked for any significant updates in transition-related FOIA requests. For your awareness, NOAA was sued under the FOIA by the Natural Resource Defense Council in the Southern District of New York premised on constructive denial based on the request DOC-OS-2017-000362. The underlying request sought a list of Transition-team related records. NOAA is one of 11 agencies or bureaus named in that lawsuit.

Background:

(b)(5) [redacted]

[redacted].

Current Status:

(b)(5) [redacted]

[redacted]. You can also contact me on any FOIA issues for a status update as usual.

Please let me know any follow up you need.

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

June 1, 2017

MEMORANDUM FOR: James LeDuc - USEC

FROM: Lola Stith
NOAA FOIA Office

SUBJECT: FOIA Request No. DOC-NOAA-2017-000362

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 on the "Document of Search" page (Page 3).

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 is through January 11, 2017. 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.

We would like to respond in a timely manner, please respond to the requester by **February 9, 2017.**

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.

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.

[ ] My office closed this request due to non-payment of fees or requester's failure to respond to correspondence (aka administrative close-out).

[X] 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.

[X] 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)
[x] (b)(6)

[ ] Interim response

[X] Final response

BRAKOB.DEVIN.ROY.1045507200

Digitally signed by BRAKOB.DEVIN.ROY.1045507200
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=NOAA, cn=BRAKOB.DEVIN.ROY.1045507200
Date: 2017.06.01 11:40:43 -04'00'

Signature (Senior Official)

6/1/2017

Date

Documentation of Search (add rows as needed)

Office where documents originated	Person recommending Disclosure Determination	Database or physical location searched	Search terms for database queries
			Uploaded same documents used for DOC-OS-2017-000308

Y / N Discussed search terms with requester

LEDUC.JAMES.G.1228706309

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DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=LEDUC.JAMES.G.1228706309
Date: 2017.06.05 15:47:52 -04'00'

Signature (contact person) Date

FOIA Search Worksheet

FOIA Tracking #: DOC-OS-2017-000308

Title: Presidential Transition

Requester/Organization: Michael Best

Date Received: January 23, 2017

Request Detail: "Please provide any presentations created for, received by or delivered to members of the Presidential Transition Team from DOC's "T16" team from 11/1/16-1/26/17. Please also provide any emails produced or received by DOC's "T16" team."

(b)(5)

(b)(5) [redacted].

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

RE: DOC-OS-2017-000362

1 message

James LeDuc - NOAA Federal <james.leduc@noaa.gov> Mon, Jun 12, 2017 at 4:19 PM
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Devin Brakob - NOAA Federal <devin.r.brakob@noaa.gov>
Cc: Rodney Vieira - NOAA Federal <rod.vieira@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

(b)(5) [redacted]

Jim LeDuc

NOAA HCHB Room 58020

Office 202-482-0965

Cell 202-510-5637

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Monday, June 12, 2017 4:13 PM
To: Devin Brakob - NOAA Federal; James LeDuc - NOAA Federal
Cc: Rodney Vieira - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: DOC-OS-2017-000362

Hello Capt. Brakob/Jim,

(b)(5) [redacted]?

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

(301) 628-5658 (O)

(b)(5) [redacted] (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.

UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

April 26, 2017

MEMORANDUM FOR: Mark H. Graff
FOIA Officer, NOAA

FROM: Michael Toland, Ph.D.
Departmental FOIA Officer
Office of Privacy and Open Government

SUBJECT: FOIA Request from Jaclyn H. Prange, Natural Resource Defense Council
DOC-OS-2017-000362

I am forwarding a copy of the attached FOIA request for your immediate attention. Please conduct a search for responsive records.

In order to be responsive to this request in a timely manner, we need all responsive documents by C.O.B. May 9, 2017. Separate the Tasker from the responsive documents when uploading to FOIAonline. Taskers should be uploaded in Case File/Correspondence/Other. Only the tasker signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure. Link - List of Exemptions: http://www.osec.doc.gov/omo/FOIA/exemptions.htm.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The Clean Copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy of responsive documents are to be uploaded in Case/Records and grouped by exemptions applied, i.e., RR (Redacted- Releasable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for "Title" of uploaded documents: **ITA - 24 documents, RR, (b)4, (b)6.** (Bureau -not sub agency - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleasable; and RU-Redacted-Unreleasable, you must apply an Exemption in the Action Column.

- For referred documents use the following format for "Title:" **15 documents refer to NTIA.**

The cut of date for the search is for the period through January 11, 2017. You must begin the search immediately on this date. Documents created after this date are not responsive to the request. If the search is delayed for any reason, please notify me immediately, but no later than 24 hours from the date listed.

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

☐ Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.

X Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. **One clean copy and one redacted copy have been uploaded.**

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.

☐ My office has found no responsive documents.

☐ All disclosure determinations have been made by the Commerce Office that originated or has control of the documents

☐ 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 material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm: _____ .

☐ Interim response **X** Final response

GRAFF.MARK.HYRUM.1514447892 Digitally signed by GRAFF.MARK.HYRUM.1514447892 DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892 Date: 2017.06.08 16:30:42 -04'00'

Signature (Senior Official) Bureau ____6/8/17_____ **Date**

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

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[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.

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[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

Vivian H.W. Wang
Natural Resources Defense Council
40 West 20th Street
New York, NY 10011
Tel.: (212) 727-4477
Fax: (212) 795-4799
vwang@nrdc.org
Counsel for Plaintiff

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 records[1] 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).

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- 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 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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[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 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 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.

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[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

NRDC

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 records[1] 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 Amoore, 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).

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[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

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- 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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(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.

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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 FDA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. 21 C.F.R. § 20.46(b)(4).

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); 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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[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).

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 FDA 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 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)

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[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

NRDC

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 records[1] 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);
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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 Commercer'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.

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[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

NRDC

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 records[1] 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).

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 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

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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).

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).

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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 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 ×

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

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)

Attachment F

SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:

Dionne Hardy, FOIA Officer
Office of Management + Budget
725 17th St. NW, Room [illegible]
Washington, DC 20503

9590 9403 0406 5163 9205 75

2. [illegible] (Transfer from service label)
7016 1970 0000 2348 6185

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) DIONNE HARDY
C. Date of Delivery 01/12/17

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

WHITE HOUSE MAIL ENTRANCE STATION WASHINGTON, DC 20500 [illegible] 0 201[illegible]

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

UNITED STATES POSTAL SERVICE

CAF DISTRICT
MD 207
10 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 records[1] 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).

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- 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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- 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).

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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 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 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.

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[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 records[1] 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.

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A. NRDC Satisfies the First Fee Waiver Requirement

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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

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(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.

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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 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 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.

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[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

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 records[1] 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);
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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.

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[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
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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 records[1] 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.

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[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).

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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 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 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]

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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.

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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
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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 records[1] 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.

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[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 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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- 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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- 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).

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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 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 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.

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[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 records[1] 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

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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).

(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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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

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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).

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 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 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.

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[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 records[1] 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

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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 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).

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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); 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 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 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.

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[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)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, June 13, 2017 11:55 AM
To: MMiller@ntia.doc.gov
Cc: Robert Swisher - NOAA Federal; Sarah Brabson - NOAA Federal; Stefan Leeb - NOAA Federal; David Bedell - NOAA Federal; Chi Kang - NOAA Federal
Subject: NTIA's Alternative DLP Proposal
Attachments: DLP Plan Final signed.pdf

Good Afternoon Mr. Miller,

(b)(5) [redacted]

[redacted]

[redacted]?

A copy of NOAA's already-approved DLP Plan is attached for reference. Thank you in advance.

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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NOAA Data Loss Prevention Plan

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

Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public[1]. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII[2].

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

NOAA Data Overview

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

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

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

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

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

NOAA DLP Strategy Overview

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

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

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

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

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

DLP Development Steps

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

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

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

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

Define Policies

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

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

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information[3][1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government[4][2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

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

Determine Information Flows

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

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

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

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

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types[5]. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported[6], and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

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

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

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

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

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[5] See, NIST SP 800-60.

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

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

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

Plan DLP Operations

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

Deploy DLP Product(s)

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

Conclusion

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

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

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency[7].

Definitions

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

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

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

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

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

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

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

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

Signed this ____ day of _____, 2016.

GOLDSTEIN.ZACHARY.G.1228698985

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

Zachary Goldstein, NOAA CIO

From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Wednesday, June 14, 2017 11:27 AM
To: Scott Smullen - NOAA Federal
Cc: Mark Graff - NOAA Federal; Robert Hogan
Subject: Re: DOC-NOAA-2017-000844: Confirming Conversation 6/13
Attachments: Generic tasker_produce (27).docx; FAL TDOC-NOAA-2017-000844.docx

Good afternoon Scott (b)(5) [redacted]

[redacted].

R/
Lola

On Wed, Jun 14, 2017 at 10:35 AM, Scott Smullen - NOAA Federal <scott.smullen@noaa.gov> wrote:

Thanks Mark (b)(5) [redacted]. -s

On Tue, Jun 13, 2017 at 4:40 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hello Scott,

(b)(5) [redacted]

[redacted].

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

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---------- Forwarded message ----------
From: **Mark Graff - NOAA Federal** <mark.graff@noaa.gov>

Date: Tue, Jun 13, 2017 at 4:29 PM
Subject: Re: DOC-NOAA-2017-000844: Confirming Conversation 6/13
To: Madalyn Brown <madbrown@edf.org>

Hello Ms. Brown,

Your summary below appears on point. I appreciate you confirming the limitation on the scope, as well as the office from which you are seeking records. That simplifies the production on our end significantly. Please let me know if there is anything else I can do as the request progresses.

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 Tue, Jun 13, 2017 at 4:15 PM, Madalyn Brown <madbrown@edf.org> wrote:

Re: Request: DOC-NOAA-2017-000844

Dear Mr. Graff,

Thank you for speaking with me today regarding EDF's request relating to climate change records on NOAA's website. I would like to confirm that during our phone conversation the following took place:

- You confirmed (per the email you sent on June 1st) that, at this point, EDF's request is non-billable and thus the fee waiver determination is moot.

- I confirmed that EDF is not seeking routine updates to the website weather data, but rather is seeking records outside of routine updates to the website following the inauguration.

- You informed me that the request has been assigned to the Office of Communications, and that the search for records appears to be ongoing. There have been no records uploaded to FOIA online at this point.

- Finally, you informed me that should EDF seek records outside of the Office Communications, we would need to submit a new request since the search is already underway and cannot be broadened further.

I look forward to hearing back from you in the next few days regarding the results of the search.

Best,

Madalyn Brown

Legal Intern

U.S. Climate Legal & Regulatory Advocacy

Environmental Defense Fund
2060 Broadway, Suite 300
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T 303-447-7218
madbrown@edf.org

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--
Scott Smullen
Acting Director
NOAA Communications
202-482-1097 o / 202-494-6515 c

--
Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [redacted]
lola.m.stith@noaa.gov

(b)(5)

(b)(5)

(b)(5)

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

January 19, 2021

MEMORANDUM FOR: Scott Smullen - OOC

FROM: Lola Stith
NOAA FOIA Office

SUBJECT: FOIA Request No. DOC-NOAA-2017-000844

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 on the "Document of Search" page (Page 3).

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 is January 19, 2017 to April 5, 2017. 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.

We would like to respond in a timely manner, please respond to the requester by **May 3, 2017.**

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.

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.

[ ] My office closed this request due to non-payment of fees or requester's failure to respond to correspondence (aka administrative close-out).

[ ] 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.

[ ] 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

_____ _____
Signature (Senior Official) Date

Documentation of Search (add rows as needed)

Office where documents originated	**Person recommending Disclosure Determination**	**Database or physical location searched**	**Search terms for database queries**

Y / N Discussed search terms with requester

_____ _____

Signature (contact person) Date

DEPARTMENT OF COMMERCE
UNITED STATES OF AMERICA

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 3, 2018 12:03 PM
To: Lola Stith - NOAA Affiliate
Subject: Fwd: Greenwood_DOC-OS-2017-0001648: Follow-Up
Attachments: Greenwood_DOC-OS-2017-001648_Search Tasker 1.docx

Do we have a status on this one from DOC? (b)(5) [redacted]?

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

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

---------- Forwarded message ----------
From: **Khalid, Sulma (Contractor)** <SKhalid@doc.gov>
Date: Wed, Jan 3, 2018 at 11:12 AM
Subject: Greenwood_DOC-OS-2017-0001648: Follow-Up
To: "Strickland, Wayne" <WayneS@ntis.gov>, "Boston, Louis" <Louis.Boston@uspto.gov>, "Baker, Stefanie" <Stefanie.Baker@uspto.gov>, "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>

Good Morning,

I am following up on the subject FOIA request: DOC-OS-2017-001648. Your Bureaus were tasked to provide OPOG with a response by December 14, 2017. To date, we have not received any such response. Please complete the attached search tasker and upload responsive records to FOIAOnline or return back to me as soon as possible. This request is now 110 days old, so your immediate attention is requested.

Thank you,

Sulma

Sulma Khalid

FOIA/PA Analyst (Contractor)

U.S. Department of Commerce

Office of Privacy and Open Government

Phone Number: (202) 482-7432

Email: skhalid@doc.gov

UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

November 15, 2017

MEMORANDUM FOR: Vernon E. Curry, CEN
Pam Moulder, ESA
Catherine Fletcher, NIST
Wayne Strickland, NTIS
Mark Graff, NOAA
Jamie Boston, PTO
Jamie Boston, PTO
Jennifer Piel, OIG

FROM: Michael J. Toland, Ph.D.
Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT: FOIA Request George Greenwood
DOC-OS-2017-001648

The U.S. Department of Commerce's FOIA Office, Office of Privacy and Open Government, received a request seeking:

1) Please state the number of staff that joined your department in each of the following months. Please provide a breakdown between political and non-political appointments, and for non-political appointments break the number of joiners down by their civil service grade.

2) Please state the number of staff that left your department in each of the following months. Please provide a breakdown between political and non-political appointments, and for non-political appointments break the number of leavers down by their civil service grade.

3) Please provide the above records pertaining to the following years:

i) December 2000	viii) December 2008	xv) December 2016
ii) January 2001	ix) January 2009	xvi) January 2017
iii) February 2001	ix) January 2009	xvii) February 2017
iv) March 2001	xi) March 2009	xviii) March 2017
v) April 2001	xii) April 2009	xix) April 2017
vi) May 2001	xiii) May 2009	xx) May 2017
vii) June 2001	xiv) June 2009	xxi) June 2017

***Please note that the FOIA does not require agencies to create records in response to a FOIA request. Therefore, if you do not maintain the information requested in records already in existence, you may respond to this tasker with a "no records" response.**

I am sending this FOIA request to you for your attention, since your office has been identified as possibly having records that may be responsive to the request. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
  - You must search every place that could reasonably be expected to have responsive documents.
  - The date range for records that may be responsive to this request is:

i) December 2000	viii) December 2008	xv) December 2016
ii) January 2001	ix) January 2009	xvi) January 2017
iii) February 2001	ix) January 2009	xvii) February 2017
iv) March 2001	xi) March 2009	xviii) March 2017
v) April 2001	xii) April 2009	xix) April 2017
vi) May 2001	xiii) May 2009	xx) May 2017
vii) June 2001	xiv) June 2009	xxi) June 2017

- If you identify any records:
  - Please provide electronic copies of the records to me within ten (10) business days of the date of this letter—on or before November 30, 2017.
    - Upload documents in FOIAonline following the instructions in the attachment entitled "Instructions for uploading documents into FOIAonline."
  - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
    - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
    - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at skhalid@doc.gov.
  - Sign and date the attached Certification of Search.
  - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
  - Check the box "My Office has found no responsive document" on the attached Certification of Search.
  - Sign and date the Certification of Search.
  - Return the completed Certification of Search to my office.

Attachments
1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions

Instructions for uploading documents into FOIAonline

A signed Certification of Search should be uploaded separately in Case File/Correspondence/Other. Only the Certification of Search signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releasable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for "Title" of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleasable; and RU-Redacted-Unreleasable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for "Title:" 15 documents refer to NTIA.

Certification of Search for FOIA Request No. DOC-OS-2017-001648

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

☐ Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.

☐ My office has found no responsive documents.

☐ All disclosure determinations have been made by the Commerce Office that originated or has control of the documents

☐ 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 material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm: _____.

☐ Interim response ☐ Final response

_____ _____

Signature (Senior Official) Date

FOIA Exemptions

Exemption 1: classified national defense and foreign relations information;

Exemption 2: internal agency personnel rules and practices;

Exemption 3: information that is prohibited from disclosure by another federal law;

Exemption 4: trade secrets and other confidential or privileged commercial or financial information;

Exemption 5: inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

Exemption 6: information involving matters of personal privacy;

Exemption 7: records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

Exemption 8: information relating to the supervision of financial institutions; and

Exemption 9: geological information on wells.

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 3, 2018 2:34 PM
To: Stephen Lipps - NOAA Federal; Holmes, Colin; Scott Smullen - NOAA Federal; Jeff Dillen - NOAA Federal; Kristen Gustafson - NOAA Federal; Robert Hogan; _DUS Staff; Tanya Dobrzynski - NOAA Federal
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; 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; Maria Williams - NOAA Federal; Shawn Martin - NOAA Federal; Kathryn Kempton - NOAA Federal; Ed Kearns - NOAA Federal; Cheryl Scannell - NOAA Federal; Devin Brakob - NOAA Federal; _OCIO GPD; Darone Jones - NOAA Federal
Subject: Weekly FOIA Incoming and High Visibility Requests
Attachments: SGM Complaint.pdf; SGM Original FOIA Request.pdf; Weekly FOIA Incoming and High Visibility Requests 12.26 to 1.3.18.xls

Good Afternoon,

Attached is the weekly report.

One request was received from the Center for Biological Diversity seeking the NMFS decision memos regarding proposed ESA listings for a group of several species. (DOC-NOAA-2017-000509).

In litigation (b)(5) [redacted]. The original request sought records regarding weather modification within the Weather Service Organization Workforce Analysis and the reason for adoption of the confidentiality provision of the "Operations and Workforce Analysis (OWA) Project." A copy of the original request and Complaint filed in DDC are attached.

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

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CIVIL COVER SHEET

JS-44 (Rev. 7/13 DC)

I. (a) PLAINTIFFS

Stop Geoengineering Minnesota

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF 88888
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

U.S. DEPARTMENT OF COMMERCE

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David A. Bahr, Bahr Law Offices, P.C.
1035 1/2 Monroe St.
Eugene, OR 97402
(541) 556-6439

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN x IN ONE BOX ONLY)

- ○ 1 U.S. Government Plaintiff
- ○ 3 Federal Question (U.S. Government Not a Party)
- ◉ 2 U.S. Government Defendant
- ○ 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	○ 1	○ 1	Incorporated or Principal Place of Business in This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated and Principal Place of Business in Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

○ **A. *Antitrust***

- ☐ 410 Antitrust

○ **B. *Personal Injury/ Malpractice***

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Medical Malpractice
- ☐ 365 Product Liability
- ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Product Liability

○ **C. *Administrative Agency Review***

- ☐ 151 Medicare Act

Social Security
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

Other Statutes
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 890 Other Statutory Actions (If Administrative Agency is Involved)

○ **D. *Temporary Restraining Order/Preliminary Injunction***

Any nature of suit from any category may be selected for this category of case assignment.

(If Antitrust, then A governs)

○ **E. *General Civil (Other)*** OR ○ **F. *Pro Se General Civil***

Real Property
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent, Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

Personal Property
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

Bankruptcy
- ☐ 422 Appeal 27 USC 158
- ☐ 423 Withdrawal 28 USC 157

Prisoner Petitions
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Conditions
- ☐ 560 Civil Detainee – Conditions of Confinement

Property Rights
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

Federal Tax Suits
- ☐ 870 Taxes (US plaintiff or defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

Forfeiture/Penalty
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

Other Statutes
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 430 Banks & Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions
- ☐ 470 Racketeer Influenced & Corrupt Organization
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Satellite TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

○ G. *Habeas Corpus/ 2255*	○ H. *Employment Discrimination*	◉ I. *FOIA/Privacy Act*	○
☐ 530 Habeas Corpus – General ☐ 510 Motion/Vacate Sentence ☐ 463 Habeas Corpus – Alien Detainee	☐ 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	☒ 895 Freedom of Information Act ☐ 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	☐ 152 Recovery of Defaulted Student Loan (excluding veterans)
○ K. *Labor/ERISA (non-employment)*	○ L. *Other Civil Rights (non-employment)*	○ M. *Contract*	○ N. *Three-Judge Court*
☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Labor Railway Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 441 Voting (if not Voting Rights Act) ☐ 443 Housing/Accommodations ☐ 440 Other Civil Rights ☐ 445 Americans w/Disabilities – Employment ☐ 446 Americans w/Disabilities – Other ☐ 448 Education	☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholder's Suits ☐ 190 Other Contracts ☐ 195 Contract Product Liability ☐ 196 Franchise	☐ 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN

◉ 1 Original Proceeding ○ 2 Removed from State Court ○ 3 Remanded from Appellate Court ○ 4 Reinstated or Reopened ○ 5 Transferred from another district (specify) ○ 6 Multi-district Litigation ○ 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
Plaintiff challenges Defendant's failure to respond to record request and appeal in manner required by FOIA.

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** **JURY DEMAND:** Check YES only if demanded in complaint YES ☐ NO ☒

VIII. RELATED CASE(S) IF ANY (See instruction) YES ☐ NO ☒ If yes, please complete related case form

DATE: 9/21/17 SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Stop Geoengineering Minnesota *Plaintiff*	)	
v.	)	Civil Action No. 1:17-cv-1930
U.S. Department of Commerce *Defendant*	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

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:

David A. Bahr, Bahr Law Offices, P.C.
1035 1/2 Monroe St.
Eugene, OR 97402
(541) 556-6439

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: _____

_____
Signature of Clerk or Deputy Clerk

1/15

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Stop Geoengineering Minnesota *Plaintiff*	)	
v.	)	Civil Action No. 1:17-cv-1930
U.S. Department of Commerce *Defendant*	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* U.S. Attorney General, Jefferson Sessions
950 Pennsylvania Avenue
NW, Washington, D.C. 20530-0001

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:

David A. Bahr, Bahr Law Offices, P.C.
1035 1/2 Monroe St.
Eugene, OR 97402
(541) 556-6439

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: _____

_____
Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Stop Geoengineering Minnesota *Plaintiff*	)	
v.	)	Civil Action No. 1:17-cv-1930
U.S. Department of Commerce *Defendant*	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF COLUMBIA
555 4th Street, NW
Washington, DC 20530

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:

David A. Bahr, Bahr Law Offices, P.C.
1035 1/2 Monroe St.
Eugene, OR 97402
(541) 556-6439

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: _____

_____
Signature of Clerk or Deputy Clerk

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
446 Old County Road, Suite 100-310
Pacifica, California 94044
(650) 219 3187 Phone
brian@gaffneylegal.com

March 10, 2017

Via U.S. Mail and Email

Department of Commerce
Departmental FOIA Office
14th and Constitution Avenue NW.
Mail Stop A300
Washington, DC 20230
EFoia@doc.gov

Re: Freedom of Information Act Request
Fee Waiver Requested

Dear Sir/Madam,

Records Requested

Pursuant to the Freedom of Information Act, through this office Stop Geoengineering Minnesota ("SGM"), requests all records[1] from January 1, 2015 to the present discussing, documenting, memorializing, or otherwise concerning:
(1) weather modification within the Weather Service Organization Workforce Analysis;
(2) the reason for adoption of the confidentiality provision of the "Operations and Workforce Analysis (OWA) Project: Charter for All Workstream Core Teams" a copy of which is attached hereto;

Fee Waiver Requested

Stop Geoengineering Minnesota ("SGM") requests that the Department of Commerce waive any applicable fees because disclosure meets the statutory standard for waiver of fees in that it is "in the public interest because furnishing the information can be considered as primarily benefitting the general public," 5 U.S.C. § 552(a)(4)(A). SGM is a project of the non-profit Minnesota Natural Health Coalition. SGM is itself a non-profit entity whose purpose is to

[1] "Records," includes all documents, correspondence, including email; agency guidelines and policies; memoranda; agency Memoranda of Understanding; notices, comments, and responses to comments; biological, scientific, and other studies; reports; environmental analyses; surveys; timelines; charts; graphs; maps; analyses; data; meeting minutes and agendas; distribution lists; notes and transcripts of meetings and conversations; and any other relevant information, **whether in hard copy or electronic/computer format.**

educate the public about how geoengineering and weather modification can impact public health. SGM has no intention to use the information sought in furtherance of any commercial interest.

(1) The Subject of the Request. The requested records concern the activities of the Department of Commerce and other government agencies regarding weather modification. The subject matter of this request therefore involves information that will significantly contribute to the public's understanding of the government's operations and activities in regards to weather modification.

(2) The Informative Value of the Information to Be Disclosed. The requested records are likely to contribute to an understanding of government operations or activities. The Department of Commerce is involved in weather modification activities and research The requested records will provide insight into the Department of Commerce's process for implementing and regulating weather modification. Many of the requested records may contain information that is not currently available to the general public; therefore, release of the requested records would represent a significant new contribution to the public domain. For these reasons, the requested records will be highly informative in relation to the subject matter of the request, and will further public understanding.

(3) Contribution to General Public Understanding. SGM's mission is to educate the public about how geoengineering and weather modification can impact public health. SGM makes this request for the purposes of providing information about governmental activities and standards, including those of Department of Commerce, to concerned members of the public. SGM is interested in the requested records because they will likely help SGM and the public better understand the methods and procedures which the Department of Commerce has for implementing and regulating weather modification.

(4) The Significance of the Contribution to Public Understanding. The requested records are likely to contribute significantly to public understanding of government operations or activities. SGM will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject. SGM regularly informs, educates and counsels the public regarding weather modification and government involvement in implementing and regulating weather modification. The subject of this FOIA request will be used to contribute to one or more of the following: public presentations, news stories contributed to or written by SGM volunteers and/or members, and/or websites (http://www.minnesotanaturalhealth.org/stopgeoengineeringmn.html and http://stopgeoengineeringmn.squarespace.com). Exactly which of these uses of the information addressed in this FOIA request will be determined after complete review of the requested material. SGM's members, volunteers, and counsel bring a broad range of expertise, skills, and familiarity with weather modification that will enable SGM to review and understand the responsive records and to supply this information in a coherent and understandable way to the general public and the media. SGM can draw on scientists, attorneys, and others to review and summarize this information. SGM certainly has the necessary qualifications relevant to any use of the records that may come about upon reviewing them. SGM's contribution to the public understanding, as compared to the level of understanding prior to disclosure, as well as SGM's

intent to inform the public, are well established. Moreover, many of the records requested may not have been publicly released to date. A requester is likely to contribute significantly to the public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government. 132 Cong. Rec. H9464 (Reps. English and Kindness).

(5) The Existence and Magnitude of a Commercial Interest. SGM has no commercial interest that would be furthered by the requested disclosure. SGM is a non-profit entity and requests the information to further its scientific, legal, and educational efforts. The FOIA fee waiver amendments of 1986 were designed specifically to allow nonprofit, public interest groups, such as SGM, access to government records without the payment of fees. FOIA's fee waiver provision is to be liberally construed in favor of waivers for noncommercial requesters.

Department of Commerce Response

Please submit responsive records, along with an index for any records withheld that clearly identifies the basis for withholding, to the letterhead address above. Please segregate any records you determine are exempt and provide the remainder and the reasons for not providing all of the responsive records.

The basic time limit for responding to FOIA requests is twenty work days. See 5 U.S.C. § 552(a)(6)(A). This time limit can be extended under certain limited circumstances for at most an additional ten working days. *See id*. at § 552(a)(6)(B).

Please provide all responsive documents that are in the files maintained by Department of Commerce personnel or offices on the date that Department of Commerce staff conducts their searches for the documents responsive to this request.[1] **SGM requests that to the extent that the Department of Commerce can do so, it furnish electronic copies of the above documents in lieu of paper copies (to minimize the expense and burden of copying).** 5 U.S.C. § 552(a)(3)(B) (note, as amended in 1996 FOIA mandates that "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.")

Please contact this office if you have any questions regarding the scope of this request, the nature of the records sought, or any other aspect of this request. I look forward to hearing from you.

By signing below, I certify that the reasons provided for a fee waiver are true and correct.

Sincerely,

Brian Gaffney

[1] *See McGehee v. CIA*, 697 F.2d 1095 (D.C. Cir. 1983); *Pub. Citizen v. Dep't of State*, 276 F.3d 634 (D.C. Cir. 2002); *Oregon Natural Desert Ass'n v. Gutierrez*, 419 F. Supp. 2d 1284, 1288 (D. Or. 2006) (federal agencies must release all documents in their possession through the date they conduct the review of their files for documents responsive to FOIA requests).

Operations and Workforce Analysis (OWA) Project: Charter for All Workstream Core Teams

The National Weather Service (NWS) Operations and Workforce Analysis (OWA) project is supported by four "Core Teams" that are each focused on one of the following topics:

- Communications and stakeholder engagement
- Organizational structure
- Operating model (including Impact-based Decision Support Services or IDSS)
- Workforce analysis

The membership of the Core Teams include NWS employees from across the organization who were approved for participation by NWS leadership. They also include National Weather Service Employees Organization (NWSEO) bargaining unit members who were recommended by NWSEO for each workstream. McKinsey & Company, which is working as an independent third-party consultant for NWS, is also participating on the teams. The Core Teams will provide essential support to the overall OWA project. This charter will establish the scope of activities and responsibilities of the Core Teams.

The main activities of the Core Teams are to:

1. **Support the Operations and Workforce Committee (OWC)**[1] in reviewing project analyses, developing and assessing options for the OWA, and answering questions or replying to requests for additional information.
2. **Assist and collaborate** with NWS OWA project leadership and McKinsey as they conduct their assessment of the NWS to ensure a collaborative and customized approach while preserving objectivity and independence. This collaboration could include participation in data calls, working groups, and/or research, and through providing guidance on action steps to take leading up to OWC[2] meetings.
3. **Augment and support** the data, information, perspectives, and ideas collected through application of individual expertise, experience, and insights (e.g., adding the perspective of Weather Forecast Offices, recommending subject matter experts (SME) for specific topics).
4. **Review and engage** on McKinsey's methodologies, insights, results and recommendations for accuracy and suggest changes if needed. To ensure an unbiased assessment, McKinsey will have final determination on the content presented to the OWC but it will be developed in a joint and collaborative effort with the Core Teams and subject matter experts.

Expectations for each member of the Core Teams include the following (may be adapted as needed, and notice will be given to ensure awareness and agreement with any changes):

- **Confidentiality: Core Team members, consultants, and SMEs are expected to maintain at all times the highest level of privacy and confidentiality regarding all information and materials shared as part of the OWA project, including initial findings and of all Core Team discussions, unless otherwise indicated (e.g., to share an approved project update that is intended to reach all NWS staff). Any interim reports or materials are considered to be**

[1] The National Weather Service (NWS) Executive Council (EC) established the NWS Operations and Workforce Committee (OWC) for the purposes of providing guidance to and making decisions on the OWA project.

drafts and are not to be shared beyond the Core Team and any consultants or SMEs who are providing independent advice. Core Team members will indicate their understanding of this requirement by signing this Charter. Consultants and SMEs will be covered as appropriate by separate non-disclosure agreements.

- **Commitment:** Core Team members are expected to fully participate in regular team meetings (in person or as conference calls, depending on location); in addition they are responsible for completing document reviews, communication steps. and other actions between meetings.

- **Role:** Core Team members are critical to the OWA in contributing insights in their areas of expertise, conducting analyses of surveys and interviews and generating input / data / that can inform the options and reports that McKinsey provides to the OWC.

- **Scope:** The Core Team activities are pre-decisional, only. In this capacity Core Team members provide input / data / guidance, serving a critical role as action-oriented groups such that when decisions are made (e.g., the approval of language for a survey or information for the website), the teams will be responsible for next steps.

- **Support:** The Core Teams will call on and engage with a cohort of Subject Matter Experts (SMEs) within the organization when needed to address specific questions, analyses or provide other expert insight

- **Duration:** The Core Teams will be in place through Phase II of the OWA project and will be considered for extended participation Phase III based on availability, interest and relevance to their area of expertise. Phase II will extend through approximately mid-October of 2015.

If you, or another Core Team member, have any questions or concerns about the Core Team Charter or other aspects of your participation, please contact Joanne Swanson Kagan, NWS OWA Project leader, at joanne.swanson@noaa.gov; Direct: 301-427-9066 or Cell: 240-393-0415. Thank you for your service to this project.

I have reviewed the Operations and Workforce Analysis (OWA) Project: Charter for All Workstream Core Teams, and I confirm that I will strictly maintain the confidentiality of all information in accordance with the Charter.

Name **Signature** **Date** **.**

_____

_____

_____

_____

_____

_____

Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2018-000512	Request	Thomas J. Madsen	Port Discovery Seafarms	12/30/2017
DOC-NOAA-2018-000511	Request	Rose Santos	FOIA GROUP INC	12/30/2017
DOC-NOAA-2018-000509	Request	Catherine Kilduff	Center for Biological Diversity	12/28/2017

Custom Report - 01/03/2018 02:09:

Received	Assigned To	Case File Assigned To	Perfected?	Due	Closed Date
01/02/2018	NOAA	NOAA	No	TBD	TBD
01/02/2018	NOAA	NOAA	No	TBD	TBD
12/28/2017	Beverly J. Smith	Beverly J. Smith	Yes	01/30/2018	TBD

17

Status	Dispositions
Assignment Determination	
Submitted	
Assignment Determination	

Detail

this FOIA concerns: Washington State Recreation and Conservation Office project #04-1649 Salmon/Snow Lower
[Reference FGI 17- 55437] relevant to DOCDG133W10CQ0049 Orders 8,12,14,15,18-23,25 we seek the following
I'm reviewing a few NMFS denials of ESA listing. I found most of the documents posted online, but I didn't see the

Watershed Restoration: final report (see attached): invoice #22 Active 10/2/2008 12:00 AM MikeR state
g: (1) specified task orders with current SOW/PWS, labor rates and all modifications
NMFS decision memos. Can you please email them to me? Bumphead parrotfish; Queen Conch; Smoc

s: "a site tour was conducted with NOAA Fisheries...Hazardous materials were encountered.&quo

oth hammerhead; Humphead wrasse; Reef manta ray; Bigeye thresher; Common thresher

ıt; Please provide any and all information concerning this billing, to include field notes and communicatio

ns and any information in the possession of NOAA concerning: planning of, the visit any related publicat

tions and contamination encountered.

From: Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov>
Sent: Monday, June 19, 2017 7:11 AM
To: Mark Graff - NOAA Federal; Kimberly Katzenbarger - NOAA FEDERAL
Subject: Quick FOIA question

Hi Mark and Kim,

I have a quick FOIA question that I would love your thoughts and expertise on, if you have time. In brief (b)(5) [redacted]

[redacted] Do you agree?

Alternatively (b)(5) [redacted]?

Thank you so much in advance,

Marty

---------- Forwarded message ----------
From: **Aida Pettegrue** <aida.pettegrue@noaa.gov>
Date: Thu, Jun 15, 2017 at 12:29 PM
Subject: Re: FOIA 2017-001233 - Requester: Derek Miller - RE: ONMS/MBNMS Correspondence with Foundations
To: Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov>
Cc: Scott Kathey <Scott.Kathey@noaa.gov>, Michelle Mills <Michelle.Mills@noaa.gov>

Hi Marty:

Regarding this FOIA request (b)(5) [redacted]?

Can you please advise us on the next steps we should take?

Thank you very much.

aida

On 6/15/2017 11:44 AM, Stephanie Altman - NOAA Federal wrote:

Aida,

Marty McCoy (copied here) is the lead attorney for Monterey Bay and can assist you with this matter.

Thanks,
Stephanie

On Monday, June 12, 2017, Aida Pettegrue <aida.pettegrue@noaa.gov> wrote:

Hi Stephanie:

ONMS received the attached FOIA request from Derek Miller. (b)(5) [redacted].

Thank you.

Aida

-------- Forwarded Message --------

Subject: Re: Your FOIA Request to NOAA (DOC-NOAA-2017-001233)
Date: Mon, 12 Jun 2017 13:02:31 -0700
From: Scott Kathey <scott.kathey@noaa.gov>
Reply-To:scott.kathey@noaa.gov
Organization:NOAA Monterey Bay National Marine Sanctuary
To: Derek J. Miller <derek@savingseafood.org>
CC: Hayes, Dawn <dawn.hayes@noaa.gov>, Pettegrue, Aida <aida.pettegrue@noaa.gov>

Derek,

Ms. Pettegrue and I have not yet received any written clarification from you or Saving Seafood regarding modification of your May 2017 FOIA request. Please respond to the queries in my June 5 email request (below) at your earliest opportunity.

Thank you,

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
FAX: 831-647-4250

On 6/5/17 2:41 PM, Scott Kathey wrote:

Derek,

Thank you for the quick response and explanation. We'll stand by for your clarification within the next couple of days.

Take care,

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
FAX: 831-647-4250

On 6/5/17 2:31 PM, Derek J. Miller wrote:

Scott,

Apologies for the delay in following up on our call last week. The course of action described in your email is still my intention but I need to run it by someone else who was out of the country last week and returns today.

I will speak to them and get back to you by Wednesday.

Best,
Derek

Derek Miller

address: 3050 K Street, NW | Suite 350 | Washington, DC 20007
tel: (202) 795-9513 | mobile: (607) 321-9765 | web: savingseafood.org | Twitter | Facebook

On Jun 5, 2017, at 5:27 PM, Scott Kathey <scott.kathey@noaa.gov> wrote:

Mr. Miller,

After the phone conversation between you, Dawn

Hayes and myself last Wednesday (May 31), we anticipated receipt of an email from you clarifying your wishes regarding your 5/19/2017 Freedom of Information Act (FOIA) request for all 2016 correspondence about Monterey Bay National Marine Sanctuary (MBNMS) between NOAA's Office of National Marine Sanctuaries and supporting foundations.

At the conclusion of our phone call last week, it was our understanding that you had decided to make a direct request to MBNMS for a synthesized report and supporting documents, in lieu of the aforementioned FOIA request. It was also our understanding that you planned to formally withdraw your FOIA request through a written email notice to Ms. Pettegrue (the ONMS FOIA Liaison), copied above. But we have received no such correspondence.

Since you specifically seek a description of each MBNMS activity funded (in part or whole) in CY2016 by a sanctuary foundation and an accounting of funds transferred by project, we could synthesize and provide the material more effectively through a simple information request to our office. Under FOIA, we can only provide pre-existing documents in raw form within a set of regulated conditions and time frames. FOIA responses do not include analysis, interpretation, or prioritization of the data. That is the responsibility of the requestor under FOIA. FOIA also requires review and tracking of the response process that can require considerable time and cost.

Unless we receive a written confirmation from you soon that you wish to withdraw your FOIA request, we must assume it is still in effect and will prioritize our time and attention to respond to that formal request. In that case, we will still need written clarification from you regarding the focused nature of the correspondence you seek under FOIA. Otherwise, you will likely receive many documents that have no relationship whatsoever to your subject of interest due to the general nature of your original written request. Since the FOIA process is quite prescriptive, we can only respond to your written requests that are on file. Changes to, or withdrawal of a formal FOIA request, must be made in writing.

Should you withdraw your FOIA request in favor of a customized report at this time, it will not in any way limit your ability to submit FOIA requests in the future.

Please let us know how you wish to proceed.

Thank you,

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
FAX: 831-647-4250

--
Stephanie Altman
Chief
General Counsel Office- Oceans and Coasts Section
National Oceanic and Atmospheric Administration
301-713-7390 (Silver Spring office)
(b)(6) [redacted] (cell)

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--

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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From: Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov>
Sent: Monday, June 19, 2017 8:51 AM
To: Mark Graff - NOAA Federal; Kimberly Katzenbarger - NOAA FEDERAL; Jackie Rolleri - NOAA Federal
Subject: Re: Quick FOIA question

As a quick follow-up, Jackie (copied here) and I discussed my FOIA question this morning. Jackie suggested (b)(5) [redacted]

Again, any thoughts you may have on these various options for proceeding would be greatly appreciated.

Thank you!

Marty

On Mon, Jun 19, 2017 at 7:10 AM, Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov> wrote:

Hi Mark and Kim,

I have a quick FOIA question that I would love your thoughts and expertise on, if you have time. In brief (b)(5) [redacted]?

(b)(5) [redacted]. Do you agree?

(b)(5) [redacted]?

Thank you so much in advance,

Marty

---------- Forwarded message ----------
From: **Aida Pettegrue** <aida.pettegrue@noaa.gov>
Date: Thu, Jun 15, 2017 at 12:29 PM
Subject: Re: FOIA 2017-001233 - Requester: Derek Miller - RE: ONMS/MBNMS Correspondence with Foundations
To: Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov>
Cc: Scott Kathey <Scott.Kathey@noaa.gov>, Michelle Mills <Michelle.Mills@noaa.gov>

Hi Marty:

(b)(5) [redacted]?

Can you please advise us on the next steps we should take?

Thank you very much.

aida

On 6/15/2017 11:44 AM, Stephanie Altman - NOAA Federal wrote:

> Aida,
>
> Marty McCoy (copied here) is the lead attorney for Monterey Bay and can assist you with this matter.
>
> Thanks,
> Stephanie
>
> On Monday, June 12, 2017, Aida Pettegrue <aida.pettegrue@noaa.gov> wrote:
>
>> Hi Stephanie:
>>
>> (b)(5) [redacted].
>>
>> Thank you.
>>
>> Aida
>>
>> -------- Forwarded Message --------
>>
>> **Subject:**Re: Your FOIA Request to NOAA (DOC-NOAA-2017-001233)
>> **Date:**Mon, 12 Jun 2017 13:02:31 -0700
>> **From:**Scott Kathey <scott.kathey@noaa.gov>
>> **Reply-To:**scott.kathey@noaa.gov
>> **Organization:**NOAA Monterey Bay National Marine Sanctuary
>> **To:**Derek J. Miller <derek@savingseafood.org>
>> **CC:**Hayes, Dawn <dawn.hayes@noaa.gov>, Pettegrue, Aida <aida.pettegrue@noaa.gov>

Derek,

Ms. Pettegrue and I have not yet received any written clarification from you or Saving Seafood regarding modification of your May 2017 FOIA request. Please respond to the queries in my June 5 email request (below) at your earliest opportunity.

Thank you,

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
FAX: 831-647-4250

On 6/5/17 2:41 PM, Scott Kathey wrote:

> Derek,
>
> Thank you for the quick response and explanation. We'll stand by for your clarification within the next couple of days.
>
> Take care,
>
> 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
> FAX: 831-647-4250
>
> ---
>
> On 6/5/17 2:31 PM, Derek J. Miller wrote:
>
>> Scott,
>>
>> Apologies for the delay in following up on our call last week. The course of action described in your email is still my intention but I need to run it by someone else who was out of the country last week and returns today.
>>
>> I will speak to them and get back to you by Wednesday.
>>
>> Best,
>> Derek

Derek Miller

address: 3050 K Street, NW | Suite 350 | Washington, DC 20007
tel: (202) 795-9513 | mobile: (607) 321-9765 | web: savingseafood.org | Twitter | Facebook

On Jun 5, 2017, at 5:27 PM, Scott Kathey <scott.kathey@noaa.gov> wrote:

Mr. Miller,

After the phone conversation between you, Dawn Hayes and myself last Wednesday (May 31), we anticipated receipt of an email from you clarifying your wishes regarding your 5/19/2017 Freedom of Information Act (FOIA) request for all 2016 correspondence about Monterey Bay National Marine Sanctuary (MBNMS) between NOAA's Office of National Marine Sanctuaries and supporting foundations.

At the conclusion of our phone call last week, it was our understanding that you had decided to make a direct request to MBNMS for a synthesized report and supporting documents, in lieu of the aforementioned FOIA request. It was also our understanding that you planned to formally withdraw your FOIA request through a written email notice to Ms. Pettegrue (the ONMS FOIA Liaison), copied above. But we have received no such correspondence.

Since you specifically seek a description of each MBNMS activity funded (in part or whole) in CY2016 by a sanctuary foundation and an accounting of funds transferred by project, we could synthesize and provide the material more effectively through a simple information request to our office. Under FOIA, we can only provide pre-existing documents in raw form within a set of regulated conditions and time frames. FOIA responses do not include analysis, interpretation, or prioritization of the data. That is the responsibility of the requestor under FOIA. FOIA also requires review and tracking of the response process that can require considerable time and cost.

Unless we receive a written confirmation from

you soon that you wish to withdraw your FOIA request, we must assume it is still in effect and will prioritize our time and attention to respond to that formal request. In that case, we will still need written clarification from you regarding the focused nature of the correspondence you seek under FOIA. Otherwise, you will likely receive many documents that have no relationship whatsoever to your subject of interest due to the general nature of your original written request. Since the FOIA process is quite prescriptive, we can only respond to your written requests that are on file. Changes to, or withdrawal of a formal FOIA request, must be made in writing.

Should you withdraw your FOIA request in favor of a customized report at this time, it will not in any way limit your ability to submit FOIA requests in the future.

Please let us know how you wish to proceed.

Thank you,

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
FAX: 831-647-4250

--
Stephanie Altman
Chief
General Counsel Office- Oceans and Coasts Section
National Oceanic and Atmospheric Administration

301-713-7390 (Silver Spring office)
(b)(6) [redacted] (cell)

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--

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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Martha McCoy

Attorney-Advisor

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From: Maria Williams - NOAA Federal <maria.williams@noaa.gov>
Sent: Friday, June 16, 2017 12:22 PM
To: Roxie Allison-Holman - NOAA Federal
Cc: Mark Graff - NOAA Federal
Subject: Fwd: FOIA DOC-NOAA-2017-001191 - Review/Approval Needed
Attachments: 1191_Paese_Redacted.pdf; 1191_Paese_Unredacted-Unreleaseable.pdf; FAL - 1191.docx

Roxie,

(b)(5) [redacted]?

Respectfully,

Maria S. Williams

Property|NESDIS FOIA Liaison |Admin Officer|FAC-COR II
National Oceanic and Atmospheric Administration
Satellite and Information Service
Office of the Assistant Chief Information Officer
Phone: 202-308-4959

Follow NOAASatellites on Social Media: Facebook, Twitter, YouTube

"Talent wins games, but teamwork and intelligence wins championship"

---------- Forwarded message ----------
From: **Maria Williams - NOAA Federal** <maria.williams@noaa.gov>
Date: Wed, Jun 7, 2017 at 9:18 AM
Subject: FOIA DOC-NOAA-2017-001191 - Review/Approval Needed
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Glenn Tallia - NOAA Federal <glenn.e.tallia@noaa.gov>
Cc: "Al.Wissman" <al.wissman@noaa.gov>

Gentlemen,

(b)(5) [redacted].

Respectfully,

Maria S. Williams

Property\NESDIS FOIA Liaison \|Admin Officer\FAC-COR II
National Oceanic and Atmospheric Administration
Satellite and Information Service
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Phone: 202-308-4959

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, June 19, 2017 9:35 AM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Task for DOC-OS-2017-001253 (Review/Signature)
Attachments: NOAA RESPONSE_Eaglesham_DOC-OS-2017-0001253 Dept Wide Input Memo mhg.pdf

You bet--looks good.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [redacted] (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 Thu, Jun 15, 2017 at 12:41 PM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Mark (b)(5) [redacted]

[redacted].

Thanks,

Lola

--
Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [redacted]
lola.m.stith@noaa.gov

UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

May 30, 2017

MEMORANDUM FOR: Jennifer Kuo, BIS
Mark Graff, NOAA
Joselyn Bingham, OCIO
Stacy Cheney, NTIA
Bobbie Parsons, IOS

FROM: Michael Toland, Deputy Chief FOIA Officer, OPOG

SUBJECT: FOIA Request from Jean Eaglesham - DOC-OS-2017-0001253

I am forwarding a copy of the attached FOIA request for your immediate attention. Please conduct a search for responsive records. "Pursuant to the federal Freedom of Information Act, I request that a copy of the following documents be provided to me: Any and all documents, including emails, memos, correspondence (including attachments), records of meetings, inter-office communications, and all other written records relating to communications from November 1 2016 onward between Andrew Liveris and/or Charles J. Kalil and/or Heinz Haller and/or Joe E. Harlan and/or Amy Wilson and/or any email sent from or to the domain dow.com and any of the following Department of Commerce officials: Wilbur Ross, Michelle O. McClelland, Daniel O. Hill, and/or Leonard Bechtel and/or Brian Lenihan and/or Benjamin Friedman The Wall Street Journal is a news organization and the information requested will not be used for commercial purposes. If there is a cost associated with this request, please contact me with an estimate."

In order to be responsive to this request in a timely manner, we need all responsive records by C.O.B. June 13, 2017. Separate the Tasker from the responsive records when uploading to FOIAonline. Taskers should be uploaded in Case File/Correspondence/Other. Only the tasker signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. <u>Please do not upload Sub-Agency Taskers.</u>

Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure. Link - List of Exemptions: http://www.osec.doc.gov/omo/FOIA/exemptions.htm.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The Clean Copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy of responsive documents are to be uploaded in Case/Records and grouped by exemptions applied, i.e., RR (Redacted- Releasable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for "Title" of uploaded documents: **ITA - 24 documents, RR, (b)4, (b)6.** (Bureau -not sub agency - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleasable; and RU-Redacted-Unredacted, you must apply an Exemption in the Action Column.

- For referred documents use the following format for "Title:" 15 documents refer to NTIA.

You must begin the search immediately. Documents created outside the date range of this request, are not responsive to the request. The responsive date range is "November 1, 2016 to May 23, 2017." If the search is delayed for any reason, please notify me immediately, but no later than 24 hours from the date listed.

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact Ayana Crawford if you have any questions about the scope of this request or the FOIA exemptions, at ACrawford@doc.gov or 202-482-9109.

Please sign this sheet of paper and check all of the appropriate boxes

☐ Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. **One clean copy and one redacted copy have been uploaded.**

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.

X My office has found no responsive documents.

☐ All disclosure determinations have been made by the Commerce Office that originated or has control of the documents

☐ 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 material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm: _____.

☐ Interim response **X** Final response

GRAFF.MARK.HYRUM.1514447892 Digitally signed by GRAFF.MARK.HYRUM.1514447892 DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892 Date: 2017.06.19 09:34:34 -04'00'

Signature (Senior Official) Bureau **Date** **6/15/17**

From: Maria Williams - NOAA Federal <maria.williams@noaa.gov>
Sent: Thursday, January 4, 2018 10:16 AM
To: Bogomolny, Michael (Federal)
Cc: Allison-Holman, Roxie (Federal); Graff, Mark (Federal)
Subject: Re: FW: FOIA Case 17-1283-EGS, JW v. Commerce
Attachments: 580 Final_FAL-v2.pdf

Happy New Year!!

(b)(6) [redacted]. Please find attached the FAL. The records are in FOIAonLine. Please note, I will be slow responding to some e-mails. I am on leave until Monday.

Respectfully,

Maria S. Williams

Admin Officer|NESDIS FOIA Liaison|Property|FAC-COR II
National Oceanic and Atmospheric Administration
Satellite and Information Service
Office of the Assistant Chief Information Officer
Phone: 202-308-4959

"Talent wins games, but teamwork and intelligence wins championship"

On Wed, Jan 3, 2018 at 11:39 AM, Bogomolny, Michael (Federal) <MBogomolny@doc.gov> wrote:

(b)(5) [redacted].

-bogo

From: Yee, Marsha (USADC) [mailto:Marsha.Yee@usdoj.gov]
Sent: Wednesday, January 03, 2018 10:59 AM

To: Bogomolny, Michael (Federal) <MBogomolny@doc.gov>
Subject: FW: FOIA Case 17-1283-EGS, JW v. Commerce

Happy new year and hope you were able to enjoy the holidays. (b)(5) [redacted]

From: Chris Fedeli [mailto:CFedeli@JUDICIALWATCH.ORG]
Sent: Wednesday, January 3, 2018 10:57 AM
To: Yee, Marsha (USADC) <MYee2@usa.doj.gov>
Subject: RE: FOIA Case 17-1283-EGS, JW v. Commerce

We did a double-check here for any incoming records on this request, but we have not received a December 21 production from NOAA. Please let me know if your client can resend the records to me, by fedex or email perhaps. Thank you.

From: Yee, Marsha (USADC) [mailto:Marsha.Yee@usdoj.gov]
Sent: Tuesday, January 02, 2018 12:48 PM
To: Chris Fedeli <CFedeli@JUDICIALWATCH.ORG>
Subject: RE: FOIA Case 17-1283-EGS, JW v. Commerce

Happy holidays to you too. I was told that NOAA sent its releases on December 21st but I was not given any information on how it did so. If plaintiff has not received it yet, please let me know. Thank you.

From: Chris Fedeli [mailto:CFedeli@JUDICIALWATCH.ORG]
Sent: Wednesday, December 27, 2017 11:03 AM
To: Yee, Marsha (USADC) <MYee2@usa.doj.gov>
Subject: RE: FOIA Case 17-1283-EGS, JW v. Commerce

Marsha, happy holidays. I'm checking in about NOAA's anticipated December 21, 2017 production in this case. Neither I nor Bill Marshall (the JW reqester) have received it. When you have a moment, please let me know when your client expects to produce these records. Thank you.

From: Yee, Marsha (USADC) [mailto:Marsha.Yee@usdoj.gov]
Sent: Monday, November 13, 2017 11:52 AM
To: Chris Fedeli <CFedeli@JUDICIALWATCH.ORG>
Subject: RE: FOIA Case 17-1283-EGS, JW v. Commerce

The agency has advised that it anticipates releasing a batch of non-exempt, responsive documents today and that, while it may not be able to release additional non-exempt, responsive documents by November 21, 2017, it still anticipates completing its releases of non-exempt, responsive documents on or before December 21, 2017.

From: Chris Fedeli [mailto:CFedeli@JUDICIALWATCH.ORG]
Sent: Wednesday, November 8, 2017 3:31 PM
To: Yee, Marsha (USADC) <MYee2@usa.doj.gov>
Subject: RE: FOIA Case 17-1283-EGS, JW v. Commerce

Just a friendly follow up about this case to make sure it doesn't slip off the radar. We had an anticipated interim production date of October 21, 2017, however my client did not receive any documents and nothing was posted on FOIAonline. The next planned production date is November 21, 2017. Kindly let me know what you can about your client's status. Thank you.

From: Yee, Marsha (USADC) [mailto:Marsha.Yee@usdoj.gov]
Sent: Wednesday, October 11, 2017 8:31 PM
To: Chris Fedeli <CFedeli@JUDICIALWATCH.ORG>
Subject: RE: FOIA Case 17-1283-EGS, JW v. Commerce, JSR Due Oct. 12

Thank you.

From: Chris Fedeli [mailto:CFedeli@JUDICIALWATCH.ORG]
Sent: Wednesday, October 11, 2017 6:39 PM
To: Yee, Marsha (USADC) <MYee2@usa.doj.gov>
Subject: RE: FOIA Case 17-1283-EGS, JW v. Commerce, JSR Due Oct. 12

Thank you for returning these and for keeping me informed. The revised versions are acceptable, and I have no objection to you filing from your end tomorrow. I don't need to see the drafts again barring any further substantive changes.

From: Yee, Marsha (USADC) [mailto:Marsha.Yee@usdoj.gov]
Sent: Wednesday, October 11, 2017 6:12 PM
To: Chris Fedeli <CFedeli@JUDICIALWATCH.ORG>
Subject: RE: FOIA Case 17-1283-EGS, JW v. Commerce, JSR Due Oct. 12

Thank you for your patience. Attached are a revised joint proposed schedule and proposed order.

Please let me know whether the attached are acceptable. If yes, I will submit the attached for internal review and then file tomorrow.

Marsha W. Yee

Assistant United States Attorney

U.S. Attorney's Office for the

District of Columbia

555 Fourth Street, N.W.

Washington, D.C. 20530

Telephone: (202) 252-2539

Fax: (202) 252-2599

Email: Marsha.Yee@usdoj.gov

From: Yee, Marsha (USADC)
Sent: Tuesday, October 10, 2017 12:02 PM
To: 'Chris Fedeli' <CFedeli@JUDICIALWATCH.ORG>
Subject: RE: FOIA Case 17-1283-EGS, JW v. Commerce, JSR Due Oct. 12

Thank you for your email and for drafting a joint status report. I forwarded the draft report to the agency but still have not receive any response about it yet. I reminded the agency again this morning.

From: Chris Fedeli [mailto:CFedeli@JUDICIALWATCH.ORG]
Sent: Tuesday, October 10, 2017 11:03 AM
To: Yee, Marsha (USADC) <MYee2@usa.doj.gov>
Subject: RE: FOIA Case 17-1283-EGS, JW v. Commerce, JSR Due Oct. 12

Marsha, following up on the below re this Thursday's deadline. I haven't heard back from you yet. Could you please let me know any feedback on the draft JSR by tomorrow? Thanks – Chris

---

From: Chris Fedeli
Sent: Friday, September 29, 2017 1:36 PM
To: 'marsha.yee@usdoj.gov' <marsha.yee@usdoj.gov>
Subject: RE: FOIA Case 17-1283-EGS, JW v. Commerce, JSR Due Oct. 12

Marsha, I see we have our first JSR due in this new case coming up on October 12 (order below) so I thought I'd reach out to you. Hopefully to save you and your client some time, I went ahead and started the attached draft joint status report for us based on everything I know about this case, and based on what we've done in similar cases. Of course if your client decides to go in a different direction or needs to change this then that is no concern. Happy to hear your thoughts, feel free to email or call me anytime. Thanks.

Chris Fedeli | **Judicial Watch, Inc.**

425 Third Street, SW | Washington, DC 20024

Tel: (202) 646-5185 | CFedeli@judicialwatch.org

Website: www.judicialwatch.org

Areas of Law: www.judicialwatch.org/amicus-briefs

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL ENVIRONMENTAL SATELLITE, DATA,
AND INFORMATION SERVICE

December 29, 2017

Bill Marshall
425 Third St., SW
Suite 800
Washington, DC 20024

Re: FOIA Request No. DOC-NOAA-2017-000580

Dear Mr. Marshall:

This is in reference to the above-captioned FOIA request # **DOC-NOAA-2017-000580** sent to NOAA dated February 9, 2017, in which you requested:

Any and all communications between Thomas Karl and John Holdren between January 20, 2009 through January 20, 2017.

Enclosed is the final release to your FOIA request. These records are accessible via FOIAOnline.

We are releasing 614 pages responsive to this request as follows:

- 143 pages released in their entirety; and
- 334 pages that has been completely redacted under FOIA Exemptions (b)(5), 5 U.S.C. § 552(b)(5), which exempts from disclosure "inter-agency or intra-agency memorandums or letters that are both predecisional and deliberative"; and
- 137 pages that has been partially redacted under FOIA Exemptions (b)(5), 5 U.S.C. § 552(b)(5), which exempts from disclosure "inter-agency or intra-agency memorandums or letters that are both predecisional and deliberative", and (b)(6), 5 U.S.C. 552(b)(6), which exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Information on Appeals

Although we do not consider this to be a denial of your request, you are granted appeal rights for this determination. Your appeal must be received within 90 calendar days of the date of the denial letter.

Your appeal may be sent by the following methods:

- By email to FOIAAppeals@doc.gov.
- By FOIAOnline, if you have an account at https://foiaonline.regulations.gov.
- If sending by mail please address your appeal to:

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

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov,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;
- Your statement explaining why the determination was in error; and
- The notation "Freedom of Information Act Appeal" 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
8601 Adelphi Road, Room 2510
College Park, MD 20740-6001
Email: ogis@nara.gov
Phone: 301-837-1996

Toll-free: 1-877- 684-6448

Department of Commerce 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.

If you have any questions, please contact Maria Williams, NESDIS FOIA Coordinator, at maria.williams@noaa.gov, or the NOAA FOIA Public Liaison Robert Swisher at robert.swisher@noaa.gov .

Regards,

Mark S. Paese
Deputy Assistant Administrator
NOAA Satellite and Information Service

DOC-NOAA-2017-000580

From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Thursday, January 4, 2018 12:25 PM
To: Mark Graff - NOAA Affiliate
Subject: December Monthly FOIA Report (DRAFT FOR YOUR REVIEW)
Attachments: FOIA Monthly Status Report 12-31-2017.pdf; FOIA Monthly Status Report 12-31-2017.xlsx; Closed - 122017.xls; Pending - 122017.xls; Incoming - 122017.xls; Backlog - 122017.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	Track	Requester	Submitted
DOC-NOAA-2017-000298	Request	Complex	Charles Mouton	11/30/2016
DOC-NOAA-2015-001487	Request	Simple	Richard Knudsen	06/29/2015
DOC-NOAA-2018-000303	Request	Simple	Ronald B. Hardwig	11/17/2017
DOC-NOAA-2017-001966	Request	Simple	Alex Kotch	09/15/2017
DOC-NOAA-2017-000580	Request	Complex	Bill Marshall	02/08/2017
DOC-NOAA-2017-000613	Request	Complex	Dan Vergano	02/07/2017
DOC-NOAA-2018-000177	Request	Simple	Roberta Goodman	10/29/2017
DOC-NOAA-2018-000183	Request	Complex	Sean Sherman	10/25/2017
DOC-NOAA-2018-000180	Request	Simple	James McNally	10/30/2017
DOC-NOAA-2018-000077	Request	Complex	Maraya Cornell	10/11/2017
DOC-NOAA-2017-001974	Request	Complex	Ryan P. Mulvey	09/21/2017
DOC-NOAA-2018-000024	Request	Simple	Allan Blutstein	10/04/2017
DOC-NOAA-2018-000105	Request	Simple	Allan Parachini	10/16/2017
DOC-NOAA-2017-001798	Request	Complex	Brett Sommermeyer	08/31/2017
DOC-NOAA-2017-001871	Request	Simple	Douglas Mackenzie	09/16/2017
DOC-NOAA-2017-001710	Request	Complex	Rick Steiner	08/01/2017
DOC-NOAA-2017-001741	Request	Simple	Vivian Wang	08/22/2017
DOC-NOAA-2017-001729	Request	Simple	Robert Boesch	08/21/2017
DOC-NOAA-2017-001606	Request	Complex	Molly Masterton	07/26/2017
DOC-NOAA-2017-001394	Request	Complex	Ivy N. Fredrickson	06/19/2017
DOC-NOAA-2017-001316	Request	Complex	Chris Saeger	06/07/2017
DOC-NOAA-2017-001411	Request	Complex	Margaret Townsend	06/22/2017
DOC-NOAA-2017-001194	Request	Complex	ERIC R. BOLINDER	05/02/2017
DOC-NOAA-2017-001431	Request	Complex	Margaret Townsend	06/27/2017
DOC-NOAA-2017-001391	Request	Complex	Elizabeth A. Mitchell	06/16/2017
DOC-NOAA-2017-001420	Request	Complex	Russ Kick	06/25/2017
DOC-NOAA-2017-001376	Request	Complex	Gabe Flick	06/12/2017
DOC-NOAA-2017-000226	Request	Complex	Emma Hiolski	11/29/2016
DOC-NOAA-2017-001198	Request	Complex	Brett Sommermeyer	05/11/2017
DOC-NOAA-2017-001285	Request	Complex	Jared S. Goodman	05/30/2017
DOC-NOAA-2017-001092	Request	Complex	Brettny E. Hardy	04/26/2017
DOC-NOAA-2017-001093	Request	Complex	Brettny E. Hardy	04/26/2017
DOC-NOAA-2017-001094	Request	Complex	Brettny E. Hardy	04/26/2017
DOC-NOAA-2017-001038	Request	Complex	Sean Sherman	04/17/2017
DOC-NOAA-2017-001220	Request	Complex	Nathan Eagle	05/16/2017
DOC-NOAA-2017-001217	Request	Complex	Nathan Eagle	05/16/2017
DOC-NOAA-2017-001219	Request	Complex	Nathan Eagle	05/16/2017
DOC-NOAA-2017-000994	Request	Complex	Mariel Combs	04/10/2017
DOC-NOAA-2016-001479	Request	Complex	Christopher Hudak	07/20/2016
DOC-NOAA-2017-000744	Request	Complex	Zeenat Mian	03/08/2017
DOC-NOAA-2017-000304	Request	Complex	Bryn Blomberg	11/30/2016
DOC-NOAA-2017-000170	Request	Complex	Kara McKenna	11/09/2016
DOC-NOAA-2016-001751	Request	Simple	Thomas Knudson	09/14/2016
DOC-NOAA-2016-001763	Request	Complex	Thomas Knudson	09/14/2016
DOC-NOAA-2016-000959	Request	Complex	Office Administrator	04/12/2016
DOC-NOAA-2016-000423	Request	Complex	Ryan P. Mulvey	12/21/2015
DOC-NOAA-2014-001474	Request	Complex	Eric Huber	08/12/2014
DOC-NOAA-2015-000190	Request	Simple	Miyo Sakashita	11/02/2014
DOC-NOAA-2017-001915	Request	Simple	Rose Santos	09/23/2017
DOC-NOAA-2017-001912	Request	Simple	Micah Maidenberg	09/22/2017
DOC-NOAA-2018-000273	Request	Complex	Andrew G. Ogden	11/14/2017

DOC-NOAA-2017-001678	Request Complex	James Zeiler	08/07/2017
DOC-NOAA-2017-000414	Request Complex	Arnold & Porter Kaye Scholer LLP	01/09/2017
DOC-NOAA-2017-001009	Request Complex	Edward Duhe	03/31/2017
DOC-NOAA-2017-001676	Request Complex	Vincent C. Catania	08/09/2017
DOC-NOAA-2017-001569	Request Complex	Sarah N. Emerson	07/19/2017
DOC-NOAA-2017-001874	Request Simple	Susanne Rust	09/18/2017
DOC-NOAA-2017-001059	Request Simple	Richard Hirn	04/18/2017
DOC-NOAA-2017-000768	Request Complex	Julio C. Gomez	03/10/2017
DOC-NOAA-2018-000229	Request Simple	Nicole Mason	11/03/2017
DOC-NOAA-2017-001975	Request Complex	Margaret Townsend	08/31/2017
DOC-NOAA-2017-001796	Request Complex	Margaret Townsend	08/31/2017
DOC-NOAA-2017-001680	Request Simple	Robert Shuchman	08/09/2017
DOC-NOAA-2017-001691	Request Simple	David Kovar	08/10/2017
DOC-NOAA-2017-001403	Request Complex	Robert Shuchman	06/20/2017
DOC-NOAA-2017-000058	Request Complex	Christopher T. Clack	10/13/2016
DOC-NOAA-2017-000034	Request Complex	Christopher T. Clack	10/11/2016
DOC-NOAA-2017-001954	Request Simple	Alex Veeneman	09/28/2017
DOC-NOAA-2017-001565	Request Complex	Charles Seife	06/19/2017
DOC-NOAA-2017-001523	Request Complex	Brian L. Kahn	07/14/2017
DOC-NOAA-2018-000302	Request Simple	Michael L. Johnson	11/13/2017
DOC-NOAA-2018-000204	Request Simple	Nicole Mason	11/01/2017
DOC-NOAA-2017-001101	Request Complex	Ryan P. Mulvey	04/27/2017
DOC-NOAA-2017-001163	Request Complex	Jacqueline Iwata	05/05/2017
DOC-NOAA-2018-000181	Request Complex	Lieutenant Anna-Liza Villard-Howe	10/24/2017
DOC-NOAA-2017-001967	Request Simple	Jennifer E. Kollmer	09/22/2017
DOC-NOAA-2018-000145	Request Simple	Madeleine Stone	10/22/2017
DOC-NOAA-2017-001745	Request Simple	Michael Ravnitzky	08/22/2017
DOC-NOAA-2017-001756	Request Simple	Jeff Tollefson	08/24/2017
DOC-NOAA-2017-001734	Request Simple	Andrew C. Revkin	08/21/2017
DOC-NOAA-2017-001739	Request Simple	Lauren N. Evans	08/22/2017
DOC-NOAA-2017-001722	Request Simple	Michael Ravnitzky	08/21/2017
DOC-NOAA-2017-001760	Request Simple	John Harding	08/16/2017

Assigned To	Due	Days Backlogged
AGO	01/13/2017	200
AGO	07/31/2015	607
CAO	12/20/2017	8
LA	11/08/2017	36
NESDIS	04/05/2017	186
NESDIS	03/29/2017	192
NMFS	12/05/2017	4
NMFS	12/13/2017	13
NMFS	12/05/2017	19
NMFS	12/01/2017	21
NMFS	11/21/2017	28
NMFS	11/16/2017	31
NMFS	11/16/2017	31
NMFS	10/25/2017	46
NMFS	10/17/2017	52
NMFS	12/29/2017	57
NMFS	10/06/2017	58
NMFS	09/19/2017	70
NMFS	09/21/2017	76
NMFS	08/11/2017	83
NMFS	07/21/2017	87
NMFS	08/10/2017	97
NMFS	06/22/2017	99
NMFS	07/28/2017	104
NMFS	08/01/2017	105
NMFS	07/28/2017	107
NMFS	07/26/2017	109
NMFS	12/22/2017	110
NMFS	07/21/2017	118
NMFS	07/13/2017	118
NMFS	07/03/2017	126
NMFS	07/03/2017	126
NMFS	07/03/2017	126
NMFS	05/16/2017	130
NMFS	08/16/2017	132
NMFS	06/20/2017	134
NMFS	06/20/2017	134
NMFS	05/09/2017	147
NMFS	09/22/2016	155
NMFS	04/06/2017	186
NMFS	01/13/2017	196
NMFS	01/05/2017	249
NMFS	10/28/2016	294
NMFS	10/27/2016	295
NMFS	05/25/2016	395
NMFS	02/04/2016	396
NMFS	09/10/2014	573
NMFS	12/05/2014	763
NOAA FOIA	10/26/2017	45
NOAA FOIA	10/25/2017	46
NOS	12/14/2017	5

NOS	10/02/2017	29
NOS	03/07/2017	30
NOS	05/23/2017	34
NOS	09/19/2017	71
NOS	09/05/2017	81
NWS	10/24/2017	45
NWS	05/19/2017	111
NWS	04/12/2017	171
OAR	12/05/2017	19
OAR	10/30/2017	43
OAR	10/25/2017	44
OAR	09/19/2017	71
OAR	09/19/2017	71
OAR	07/25/2017	110
OAR	11/25/2016	136
OAR	11/09/2016	139
OC	11/08/2017	13
OC	08/30/2017	84
OC	08/16/2017	94
OGC	12/18/2017	10
OGC	12/01/2017	21
OGC	06/16/2017	136
OGC	06/16/2017	136
OMAO	01/05/2018	13
OMAO	11/08/2017	36
USEC	11/21/2017	28
USEC	09/22/2017	68
USEC	09/22/2017	68
USEC	09/20/2017	70
USEC	09/20/2017	70
USEC	09/19/2017	71
WFMO	10/10/2017	58

Tracking Number	Type	Requester	Requester Organization
DOC-NOAA-2018-000462	Request	Robin Baird	Cascadia Research Collective
DOC-NOAA-2018-000391	Request	Dawn Grossman	Herold & Sager
DOC-NOAA-2018-000417	Request	Paul F. Johnston	National Museum of American History
DOC-NOAA-2018-000370	Request	Joseph Kakesh	Wiley Rein LLP
DOC-NOAA-2018-000330	Request	Leslie Lynch	Ryan
DOC-NOAA-2018-000306	Request	Max Walker	ABC15 Arizona
DOC-NOAA-2018-000286	Request	Ronald B. Hardwig	
DOC-NOAA-2018-000285	Request	Jason A. Milch	
DOC-NOAA-2018-000300	Request	Michael L. Johnson	
DOC-NOAA-2018-000298	Request	Dr. Laurice Dee	
DOC-NOAA-2018-000292	Request	Dr. Laurice Dee	
DOC-NOAA-2018-000291	Request	Dr. Laurice Dee	
DOC-NOAA-2018-000250	Request	Peggy Heinkel-Wolfe	
DOC-NOAA-2018-000228	Request	Zeenat Mian	
DOC-NOAA-2018-000185	Request	Joseph Zekany	
DOC-NOAA-2018-000179	Request	Muira McCammon	
DOC-NOAA-2018-000165	Request	Benita Whitfield	ERT, Inc.
DOC-NOAA-2018-000164	Request	Benita Whitfield	ERT, Inc.
DOC-NOAA-2018-000163	Request	Benita Whitfield	ERT, Inc.
DOC-NOAA-2018-000152	Request	Michael Pyskaty	
DOC-NOAA-2018-000146	Request	Greg Scanlon	
DOC-NOAA-2018-000094	Request	Michael Ryan	
DOC-NOAA-2017-001964	Request	William S. Walker	
DOC-NOAA-2017-001969	Request	Teresa Carey	PBS NewsHour
DOC-NOAA-2017-001782	Request	Christine M. Walker	Fowler White Burnett
DOC-NOAA-2017-001763	Request	Christopher M. Hannan	Baker Donelson
DOC-NOAA-2017-001743	Request	Zeenat Mian	
DOC-NOAA-2017-001529	Request	Rafe Petersen	Holland & Knight LLP
DOC-NOAA-2017-001530	Request	Katherine Poole	Natural Resources Defense Council
DOC-NOAA-2017-001487	Request	John Greenewald	The Black Vault
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-2017-001070	Request	Christopher Hudak	Environmental Advocates
DOC-NOAA-2017-000790	Request	Brian Gaffney	Law Office of Brian Gaffney

Custom Report - 01/0

Submitted	Received	Assigned To	Case File Assigned To	Perfected?	Due
12/18/2017	12/18/2017	Kehaupuaokal Kamaka	Kehaupuaokal Kamaka	Yes	01/18/2018
12/05/2017	12/05/2017	Lola Stith	Lola Stith	No	TBD
12/05/2017	12/05/2017	Nkolika Ndubisi	Nkolika Ndubisi	Yes	01/09/2018
12/01/2017	12/01/2017	Lola Stith	Lola Stith	No	TBD
11/22/2017	11/22/2017	Lola Stith	Lola Stith	No	TBD
11/17/2017	11/17/2017	Tawand Hodge Tonic	Tawand Hodge Tonic	Yes	12/19/2017
11/16/2017	11/16/2017	Lawanda Fisher	Lawanda Fisher	Yes	12/18/2017
11/16/2017	11/16/2017	Maria S. Williams	Maria S. Williams	Yes	12/18/2017
11/13/2017	11/13/2017	Arlyn E. Penaranda	Arlyn E. Penaranda	Yes	01/03/2018
11/13/2017	11/13/2017	Tawand Hodge Tonic	Tawand Hodge Tonic	Yes	12/18/2017
11/13/2017	11/13/2017	Tawand Hodge Tonic	Tawand Hodge Tonic	Yes	12/18/2017
11/13/2017	11/13/2017	Tawand Hodge Tonic	Tawand Hodge Tonic	Yes	12/18/2017
11/09/2017	11/09/2017	Maria S. Williams	Maria S. Williams	Yes	12/14/2017
11/06/2017	11/06/2017	Kehaupuaokal Kamaka	Kehaupuaokal Kamaka	Yes	12/12/2017
10/30/2017	10/30/2017	Nkolika Ndubisi	Nkolika Ndubisi	Yes	12/12/2017
10/27/2017	10/27/2017	Symone Stone	Symone Stone	Yes	12/05/2017
10/26/2017	10/26/2017	Dalton Cummings	Dalton Cummings	Yes	12/05/2017
10/26/2017	10/26/2017	Dalton Cummings	Dalton Cummings	Yes	11/30/2017
10/26/2017	10/26/2017	Dalton Cummings	Dalton Cummings	Yes	12/05/2017
10/24/2017	10/24/2017	Symone Stone	Symone Stone	Yes	11/29/2017
10/20/2017	10/20/2017	Ellen Sebastian	Ellen Sebastian	Yes	12/06/2017
10/13/2017	10/13/2017	Symone Stone	Symone Stone	Yes	11/16/2017
09/29/2017	09/29/2017	Susan S. Beresford	Susan S. Beresford	Yes	11/08/2017
09/21/2017	09/21/2017	Tawand Hodge Tonic	Tawand Hodge Tonic	Yes	11/08/2017
08/29/2017	08/29/2017	Nkolika Ndubisi	Nkolika Ndubisi	Yes	09/27/2017
08/24/2017	08/24/2017	Nkolika Ndubisi	Nkolika Ndubisi	Yes	09/27/2017
08/22/2017	08/22/2017	Kehaupuaokal Kamaka	Kehaupuaokal Kamaka	Yes	10/06/2017
07/13/2017	07/13/2017	Sophia Howard	Sophia Howard	Yes	08/14/2017
07/13/2017	07/13/2017	Shawn L. Martin	Shawn L. Martin	Yes	11/01/2017
07/06/2017	07/07/2017	Annie Thomson	Annie Thomson	Yes	08/14/2017
06/16/2017	06/16/2017	Arlyn E. Penaranda	Arlyn E. Penaranda	Yes	08/01/2017
06/14/2017	06/15/2017	Ana Liza Malabanan	Ana Liza Malabanan	Yes	12/07/2017
04/21/2017	04/21/2017	Ana Liza Malabanan	Ana Liza Malabanan	Yes	10/31/2017
03/14/2017	03/14/2017	Beverly Hernandez	Beverly Hernandez	Yes	04/17/2017

4/2018 10:34:28

Closed Date	Status	Dispositions
12/28/2017	Closed	Full grant
12/11/2017	Closed	Improper FOIA request for other reason
12/27/2017	Closed	Full grant
12/08/2017	Closed	Duplicate request
12/08/2017	Closed	Duplicate request
12/08/2017	Closed	Full grant
12/19/2017	Closed	No records
12/12/2017	Closed	No records
12/18/2017	Closed	Full grant
12/08/2017	Closed	Other - Directed requester to publicly available information
12/13/2017	Closed	Full grant
12/18/2017	Closed	No records
12/01/2017	Closed	Full grant
12/28/2017	Closed	No records
12/13/2017	Closed	No records
12/18/2017	Closed	No records
12/14/2017	Closed	Partial grant/partial denial
12/14/2017	Closed	Partial grant/partial denial
12/14/2017	Closed	Partial grant/partial denial
12/08/2017	Closed	No records
12/01/2017	Closed	Request withdrawn
12/18/2017	Closed	Other - Admin close - still interested letter
12/14/2017	Closed	Full grant
12/15/2017	Closed	Full grant
12/13/2017	Closed	Full grant
12/13/2017	Closed	Full grant
12/20/2017	Closed	Other - Admin close - still interested letter
12/14/2017	Closed	Other - Admin close - still interested letter
12/28/2017	Closed	Partial grant/partial denial
12/28/2017	Closed	Other - Directed requester to publicly available information
12/28/2017	Closed	Other - Admin close - still interested letter
12/07/2017	Closed	Partial grant/partial denial
12/21/2017	Closed	Partial grant/partial denial
12/04/2017	Closed	Partial grant/partial denial

Detail

I would like to request GIS shapefiles of a number of excluded areas in the false killer whale critical habitat proposa
Please provide hourly weather data to include rainfall and wind speeds for the Haleakala National Park, Kula HI, 96
A report that was produced from when some NOAA staff had gone to the Premier/RMS Titanic, Inc. warehouse of
Please also see attached letter. Pursuant to the Freedom of Information Act ("FOIA"), as amended, 5 U.S.C. Sectio
I am requesting a list of outstanding, uncashed, stale dated checks and/or unreconciled payments issued by the Na
To Whom It May Concern: This is a request under the Freedom of Information Act. I would like to request any and
What is the final report for OIG Case # 17-1346??????????????
It is my belief that the NOAA has conducted a study in relation to climate change. That study is the subject of my re
November 30, 2017: The report I am requesting, the "Boatracs QualComm OmniTracs Mobile Communication Ter
All correspondence [letters, emails, and memos] that document the transfer of the following Bottlenose dolphins: *
A complete necropsy report on Bodie - the 7-year-old male Bottlenose dolphin - who passed away at Dolphinaris A
All correspondence [letters, emails, memos, reports, documents, and veterinary records] that document the followi
Satellite images of the Dallas-Fort Worth region on October 19, 2017. An image every half hour (6:30 a.m., 7 a.m.
Under the Freedom of Information Act I would like to request the following information: FULL and complete recoun
Ship logs, combat action reports or any information regarding the J.D. Yeager
I would like copies of all tweets deleted by the National Weather Service's Twitter feed (@NWS) from January 201
DG133E-12-CQ-0033/T-0003 and T-0021 : FY17-FY18 Work Assignments , which are the most current Statement
DG133E-12-CQ-0034/T-0002 and T-0004 : FY17-FY18 Work Assignments , which are the most current Statement
DG133E-12-CQ-0021/T-0005 : FY17-FY18 Work Assignments , which are the most current Statements of Work to
I am seeking records of all contracts or agreements for digital and online advertising from the National Weather Se
This is a request under the Freedom of Information Act. I am requesting copies of the following documents: Any av
I would like all NOAA land based facilities dollar amount expenditures by facility in the National Weather Service fo
I request a copy of the travel reimbursement claim (some agencies use the term TDY claim) of Loren Remsberg, E
I request access to and copies of records generated or reviewed during any "After Action Review" meeting regardin
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
Under the Freedom of Information Act I would like to request all the information listed below inter agency (within NO
I request access to and copies of any and all documents in the possession of the National Oceanic and Atmospher
1. All records 1 related to the effect on endangered winter-run chinook salmon, threatened spring-run chinook salm
I respectfully request a copy of records, electronic or otherwise, of the following document: Title: Proceedings of the
Through the Freedom of Information Act, I request the following documents: 1. E-mails, photographs and possibly
This request is directed to the National Marine Fisheries Service and pertains to the Pacific Northwest region (Was
1. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning
...all records from January 1, 2015 to the present discussing, documenting, memorializing, or otherwise concerning

al through FOIA. The particular shapefiles we are looking for are the boundaries of Warning Area 187, th
5790 from the week of September 21, 2015 up to and including September 28, 2015.
Titanic collections in Atlanta some time ago.
on 552, and the Department of Commerce ("Department") rules issued thereunder, 15 C.F.R. Part 4, I a
ational Oceanic and Atmospheric Administration, with regard to accounts payable, property tax and vend
all records pertaining to the death of Bodie (NOAA ID: NOA0006642), a male bottlenose dolphin who wa

equest. As the NOAA has conducted multiple climate change studies in the past I will provide you with tw
minal Position Accuracy Report" dated March 1999, was used as an exhibit in a hearing before Coast G
from Dolphin Quest in Hawaii to Dolphinaris Arizona in Scottsdale, AZ on the 25th - 26th of September i
rizona in Scottsdale, AZ on the 23rd of September 2017. Bodie was born on the 7th of June in 2010 at S
ng: 1. Eye injury sustained by two dolphins - Kai Nalu and Noelani - during transport from Hawaii to Arize
, 7:30 a.m., etc.) from dawn until dusk would work. But after seeing those images, I would like to reser
t of all the time (hours/days/etc.) all NOAA PIRO employees and all NOAA PIRO contractors have spent

2 to the present. This would include any tweets sent out on Twitter that were deleted or kept in draft form
ts of Work to exclude Contractor's cost information.
ts of Work to exclude Contractor's cost information.
exclude Contractor's cost information. and DG133E-12-CQ-0021/T-0006 : FY17-FY18 Work Assignme
ervice Office in Binghamton, NY for the past year. These can include, but are not limited to, contracts or
vailable Form 88-195 statement of financial interest filings regarding Lawrence "Larry" Cotter
r the last 10 years.
Enforcement Attorney for the NOAA Office of General Counsel for the Charles Mincey Jr. hearing (Dock
ng whale entanglements, whale strandings or any marine animal distress incident (including seals, sea li
genta line from its navigational chart
CHART MANUAL (2) Any and all documents or files associated with the charting of oil and gas structure
OAA) and intra agency (between NOAA and any other external source/entity) : - all licenses and permits
ric Administration concerning the 19.43-acre parcel located on the south side of SW 72nd Street (Sunse
non, and their habitat, of water diversions by any or all Sacramento River Settlement Contractors from 2
e thirteenth Interagency Conference on Weather Modification, October 12-15, 1971, Skyland, Virginia Fi
faxes and other communications before and after and relating to my observer trip on board the America
shington state). Full text of the request is contained on the uploaded .pdf file entitled FOIA - NMFS-PacN
any potential, contemplated, proposed, or completed Endangered Species Act ("ESA") section 7 consu
g: (1) weather modification within the Weather Service Organization Workforce Analysis; (2) the reason f

ne Kingfisher Range, the Ewa Training Minefield, and the combined Warning Area 188 A and B and PMI

m requesting the following records: (1) Any and all records provided by the Department or any compone
dor over-payments, refunds or credits. We only need checks made out to corporations/businesses (not i
as in the custody of Dolphinaris Arizona, 9500 E. Via de Ventura, Scottsdale, Arizona. The dolphin's dea

vo sets of data which I believe were generated, and as a result, are contained within that study I am requ
uard Administrative Law Judge Edwin Bladen in June 2001. The Docket Number is NE9980310FMIV. Th
in 2016: Kai Nalu, Liko, and Noelani. * from Six Flags in Vallejo, California to Dolphinaris Arizona in Scot
Six Flags Discovery Kingdom in Vallejo, CA. All correspondence [letters, emails, memos, reports, and ve
ona on the 25th - 26th of September in 2016. Exactly what happened during transport that would cause
ve the right to ask for more images within a certain time frame.
t on the actual shoreline/beaches/waters of the Main Hawaiian Islands and Northwestern Hawaiian islan

n from the Twitter accounts @NWS. This request also would include copies of any e-mails or correspon

ents , which are the most current Statements of Work to exclude Contractor's cost information.
agreements between the government and companies that publish advertisements on websites or other
in any of his roles with the North Pacific Fishery Management Council, or Western Alaska Community D

et No. SE1305037) July 15-16, 2014, at Georgetown, S.C. This summer I asked NOAA for an estimate
ions, sea turtles, etc.) that occurred between January 2007 and the present. Specifically, I request recor

s in Quarantine Bay, Louisiana, as depicted on NOAA/NOS/OCS Chart # 11364 and/or US Coast and G
issued by the State of Hawaii to NOAA Fisheries in 2016 and 2017. - all licenses and permits issued by
t Drive) at SW 73rd Court (the "Property" sometimes also described as the "Christ Jou
013 to the present. 2. All records related to the effect on endangered winter-run chinook salmon, threate
irst Author: Interagency Conference on Weather Modification (13th : 1971 : Skyland, Va.) Publisher: U.S
No. 1, a US-flagged Patagonia Toothfish longline vessel then owned by Lawrence Lasarow, PacFish, In
W-WA (061417). All public disclosure records requests made to NATIONAL MARINE FISHERIES SERV
ltations (16 U.S.C. § 1536) that have been initiated or proposed, including Biological Opinions, Biologica
for adoption of the "Operations and Workforce Analysis (OWA) Project: Charter for All Workstream

RF offshore area as shown in the FR notice for the proposed rule (i.e., those areas out to the 3,200 m d

ent thereof to any person in response to FOIA requests submitted in 2017 to the Department, NOAA, NM
ndividuals) for amounts over $100, dated 1/1/2010 to current date. Please include check number and ar
ıth occurred on or about September 23, 2017.

esting. The first set of data is in relation to (and may be titled) Carbon Dioxide levels for 400,000 years.
ne report, referred to as the McSherry Report in the hearing, was entered as Agency Exhibit #22. The he
tsdale, AZ on the 24th of August 2016: Ping, Sonny, Khloe, Alia, and Bodie. Copies of any permits issue
eterinary records] that document the following: 1. Bodie's illness and/or injury that preceded his death. 2.
Kai Nalu and Noelani to lose their vision? 2. Khloe's possible pregnancy in spring of 2017. If this is the c

ds responding to all actions/activities/programs, etc. pertaining to the Hawaiian monk seal. I require this

dence regarding the drafting and deletion of these tweets.

digital platforms.
Development Association, if applicable

of the money spent by the government to unsuccessfully prosecute Mr. Mincey and was refused any info
ds including but not limited to correspondence (including emails), meeting notes, reports, incident/injury

Geodetic Survey Chart #1271 and/or NOAA Electronic Navigation Chart (ENC) US4LA35M for the years
the State of Hawaii Department of Transportation to NOAA Fisheries in 2017. - All communications bet
rney Church" property or parcel) as addressed in the May 25, 2017 letter from Roxanna Hinzman
ned spring-run chinook salmon, and their habitat, of water operations and deliveries by the U.S. Bureau
. Dept. of Commerce, National Oceanic and Atmospheric Administration Pub date:[1971?] NOAA Centr
nc. I met the vessel in Spain September 28, 2003, sailed for the Southern Ocean to test CCAMLR seabi
/ICE (Pacific Northwest/Washington State) by any of the entities listed below: 1. Any and all representati
al Assessments, Biological Evaluations, or informal consultations, pertaining to the implementation of the
n Core Teams" a copy of which is attached.

epth contour).

IFS, or any component thereof (including but not limited to the June 27, 2017 FOIA request submitted b
nount, payee name, and issue date. Information will not be resold and will only be used to perform a fore

The second set of data is in relation to (and may be titled) Average global temperature variations for 40
earing took place in Boston, MA. _____SEE ATTACHED SUPPORTING FILES_
ed to facilitate the transfer of the dolphins. Records that document the agreement for the dolphins to be
Duration of Bodie's illness and/or injury. 3. Bodie's appetite, behaviors, respiratory system, motor functi
ase, what had ever happened to her calf? 3. Mistreatment of the eight Bottlenose dolphins at Dolphinari

down by : employee / contractor; Department; location; Reason/ activity. Time frame requested: 2011 -

ormation on the matter. A significant part of the hearing expense will be the travel, accommodations, me
reports, studies and schedules.

1960-2016 (3)For the years 1960-2016, any and all copies of documents provided by the US Army Corp
ween NOAA Fisheries and the State of Hawaii regarding usage/posting/setting of NOAA signs, fences,
to Juan Mayol (attached). This request includes but is not limited to: 1. Any and all communications by a
of Reclamation to meet the demands of the Sacramento River Settlement Contracts from 2013 to the p
al Library Call number: QC926.6 .I5 1971
rd mitigation measures to be confirmed prior to entry into a CCAMLR Ross Sea experimental fishery. M
ives and employees of Smith & Lowney PLLC law firm of Seattle, Washington; 2. Any and all representa
National Flood Insurance Program ("NFIP") by the Federal Emergency Management Agency ("FEMA")

y the Center for Biological Diversity with the FOIA request record DOC-NOAA-2017-001431) requesting
ensic review on outstanding disbursements for corporate clients currently under contract with us; we do

0,000 years. **SEE SUPPORTING FILES FOR DETAIL**
_____ I request a copy of the report known as the McSherry Report
on loan to Dolphinaris Arizona. The date range for the records search is 08/24/2016 to 11/14/2017.
on, and participation in interactive programs with visitors during illness and/or injury. 4. Bodie's muscle b
s Arizona. 4. Improper veterinary care for the dolphins at the Scottsdale facility. 5. Questionable water q

2017.

als and incidental per diem paid to Remsberg and other members of the government team.

s of Engineers to NOAA/NOS/OCS (and specifically the NOS Marine Charting Division) regarding any s
etc. from January 2017 until present. - NOAA Fisheries documents: Recovery Action 8, Recovery Action
nd between Tom Jackson, Research Fisheries Biologist, Protected Resources Division (NOAA) and the
resent.

y time on board this vessel was from September 28, 2003 through approximately November 27, 2003. T
tives and employees of Puget Soundkeeper Alliance; 3. Any and all representatives and employees of R
at the California statewide level or relating solely or specifically to any of the following California countie

records relating to draft and/or final biological evaluations of malathion under the Endangered Species
not solicit anyone or work with individuals. Electronic files in Excel format are preferred. Records can be

iopsy. 5. Natural death or euthanasia. 6. Location of Bodie's necropsy. 7. Exact cause of Bodie's death.
uality in the indoor and outdoor dolphin pools at Dolphinaris Arizona. 6. The firing of Dr. Grey Stafford, th

structures in Quarantine Bay, Louisiana, including without limitation permits for construction of structures
13, Recovery Action 14, ENG 2, EDU 2, how those plans are being consolidated and implemented for
U.S. Fish and Wildlife Service concerning the Property; 2. Any and all communications by and betweer

The time frame of communications I request is from August 1, 2003 until August 1, 2005. I request e-mai
E Sources for Sustainable Communities; 4. Any and all representatives and employees of Skagit River
s and/or towns/cities/unincorporated territories therein: Humboldt, Santa Cruz, Monterey, Ventura, Santa

Act ("ESA"); (2) Any and all records provided by the Department or any component thereof to any perso
sent to me at leslie.lynch@ryan.com. This information is being requested under the Freedom of Inform

8. Final disposition of Bodie's remains. The date range for the records search is 08/24/2016 to 11/14/20
ne General Manager of Dolphinaris Arizona. 7. The departure of Dr. Molly Martony, the head veterinarian

in Quarantine Bay and/or establishment/erection of private aids to navigation in Quarantine Bay (4)For t
pupping zones and more specifically for this pupping zone in Waikiki. Also, any plans and steps to be tak
n Joan Browder, Research Ecologist (NOAA) and staff at the U.S. Fish and Wildlife Service concerning t

ils, faxes or other communications, from this time period, to and from myself to DOC employees - Chris
System Cooperative; 5. Any and all representatives and employees of Swinomish Indian Tribal Commun
n Barbara, San Luis Obispo, San Mateo, Marin, and Sonoma counties. 2. Any reports, memoranda, corre

n in response to FOIA requests submitted in 2017 to the Department, NOAA, NMFS, or any component
ation Act. If you have any questions or need any additional information, do not hesitate to contact me. Th

017.
n of Dolphinaris Arizona. 8. The overall health of the dolphins and the amount of interaction they have wi

the years 1960-2016, any and all copies of documents relating to Well 149 or 149-D located in Quarantin
ken for when the pup is weaned. - All communications between NOAA and HMAR regarding all pupping
he Property; 3. Any and all surveys, Geographic Information System data or other documents pertaining

Jones (SWFSC); Robin Tuttle; Teresa Turk; NOAA OLE; Paul Ortiz (Office of General Counsel); Frank
nity. since the time period November 1, 2016 to the present regarding any of the following: 1. Skagit Cou
espondence, or other documents (including electronic mail messages) concerning any ESA section 10 p

thereof (including but not limited to the June 27, 2017 FOIA request submitted by the Center for Biologic
hank you in advance for your assistance.

th humans daily. The date range for the records search is 08/24/2016 to

ne Bay, Louisiana
activities on Oahu from 28th June 2017 until present.
to the presence of Miami tiger beetle, (Cicindela floridana) on the Property or in the immediate vicinity c

Sprtel (Deputy General Counsel); Mike Gonzales (OLE); Brett Schneider (OLE). E-mails pertaining to m
nty Diking District No 3; 2. Skagit County Dike, Drainage, and Irrigation Improvement District No
ermits that have been applied for or issued, Freedom of Information Act Request April

cal D

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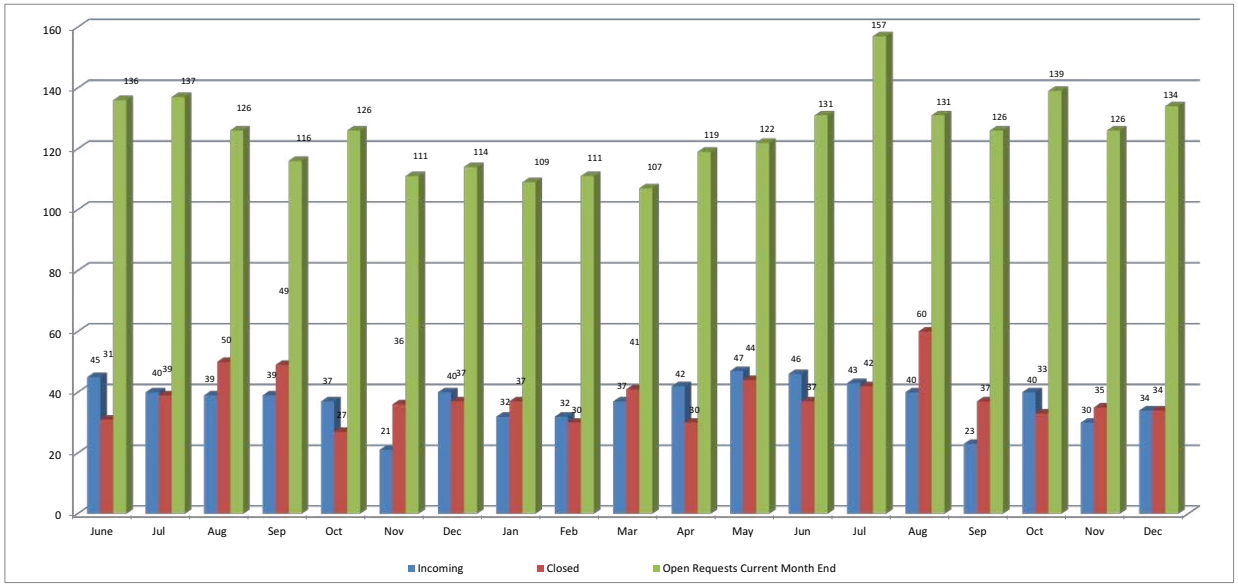
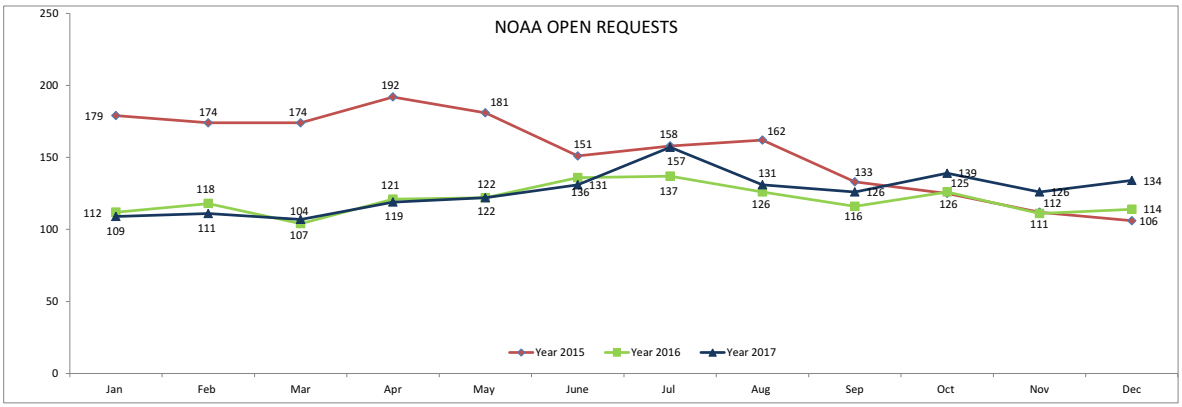
ıy deployment

FOIA Monthly Status Report 12-31-2017

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	5	3	3	6	0	1	1	2
CAO	2	1	1	2	1	0	0	1
CFO	0	0	0	0	0	0	0	0
CIO	0	0	0	0	0	0	0	0
CIO/FOIA	2	5	3	8	2	0	0	2
GC	5	0	1	4	2	2	0	4
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	3	1	2	2	0	2	0	2
NMFS	60	17	15	67	24	14	4	42
NOS	14	2	4	10	6	0	0	6
NWS	9	1	4	6	2	1	0	3
OAR	13	2	1	14	6	2	0	8
OMAO	2	1	0	3	2	0	0	2
OC	3	0	0	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	5	0	0	6	6	0	0	6
WFMO	2	1	0	2	1	0	0	1
NOAA Totals	**126**	**34**	**34**	**134**	**56**	**22**	**5**	**83**




NOAA OPEN REQUESTS
250
200
150
100
50
0
Jan
Feb
Mar
Apr
May
June
Jul
Aug
Sep
Oct
Nov
Dec
Year 2015
Year 2016
Year 2017
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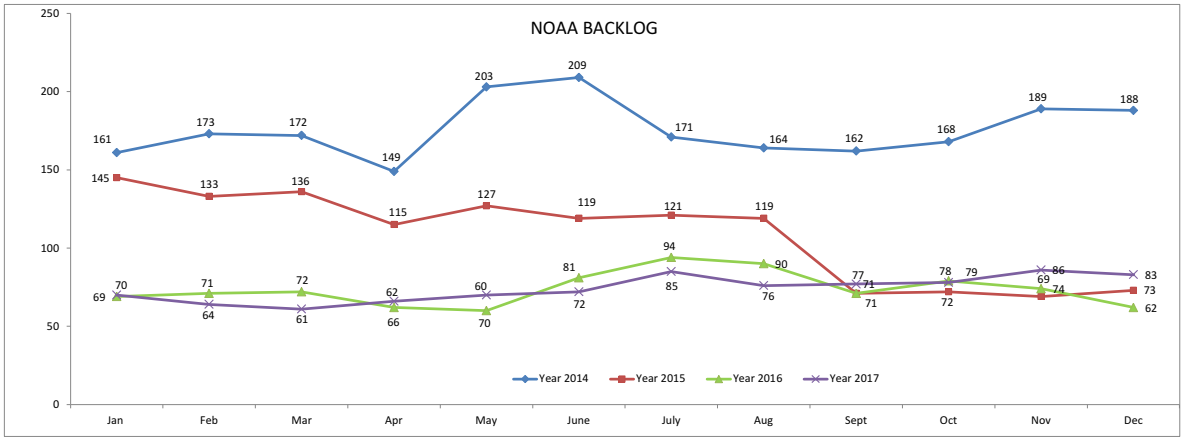
NOAA BACKLOG
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Jan
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Year 2014
Year 2015
Year 2016
Year 2017
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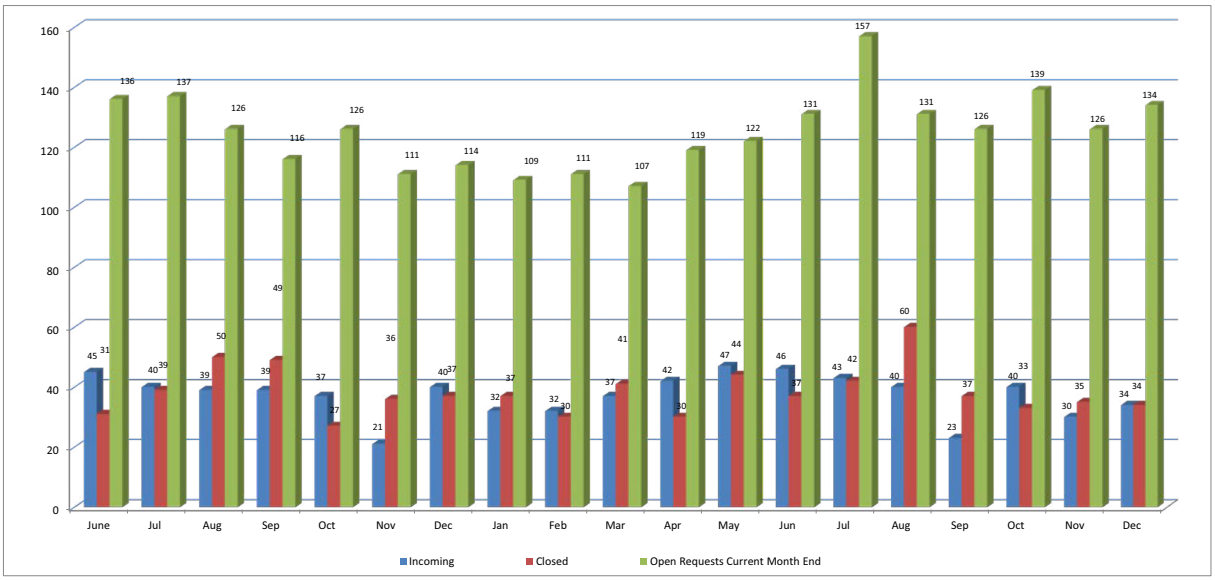
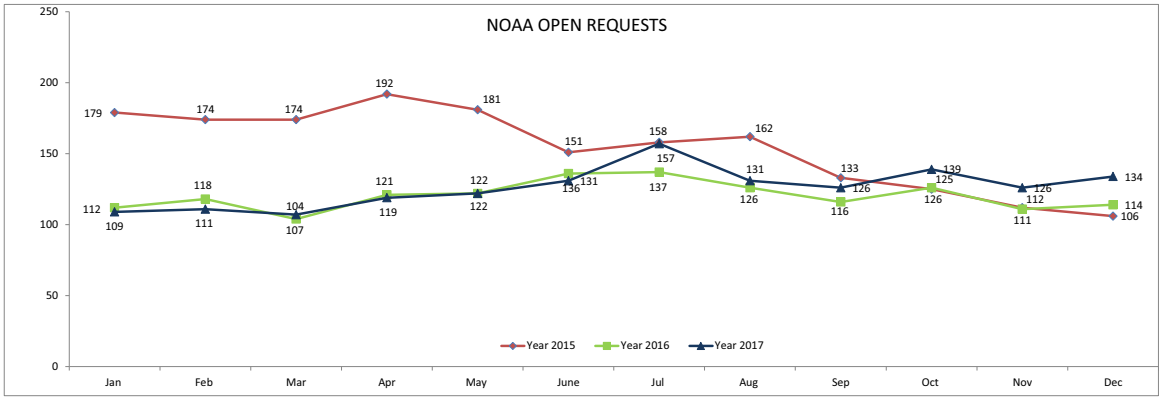
86
83

Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	5	3	3	6	0	1	1	2
CAO	2	1	1	2	1	0	0	1
CFO	0	0	0	0	0	0	0	0
CIO	0	0	0	0	0	0	0	0
CIO/FOIA	2	5	3	8	2	0	0	2
GC	5	0	1	4	2	2	0	4
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	3	1	2	2	0	2	0	2
NMFS	60	17	15	67	24	14	4	42
NOS	14	2	4	10	6	0	0	6
NWS	9	1	4	6	2	1	0	3
OAR	13	2	1	14	6	2	0	8
OMAO	2	1	0	3	2	0	0	2
OC	3	0	0	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	5	0	0	6	6	0	0	6
WFMO	2	1	0	2	1	0	0	1
NOAA Totals	**126**	**34**	**34**	**134**	**56**	**22**	**5**	**83**




NOAA OPEN REQUESTS
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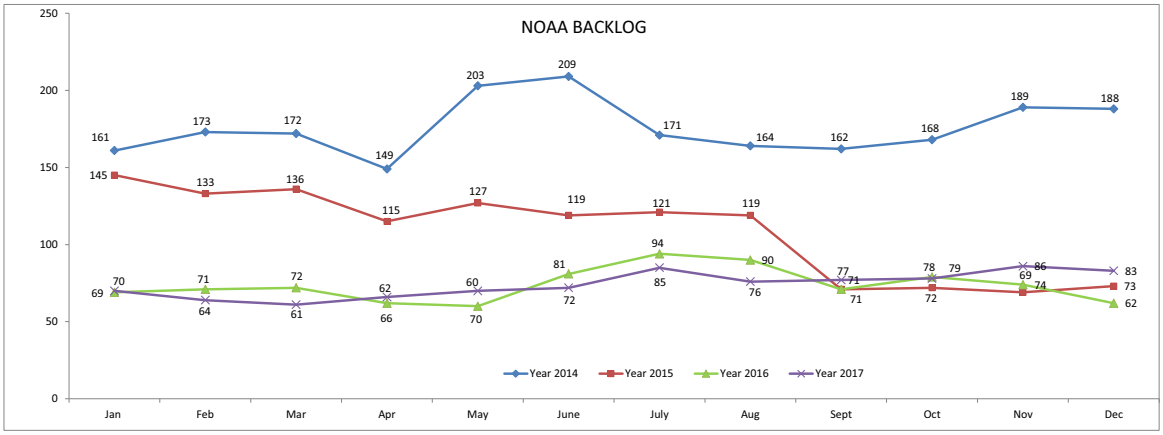
Year 2015
Year 2016
Year 2017


NOAA BACKLOG
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Year 2014
Year 2015
Year 2016
Year 2017

Tracking Number	Type	Requester	Requester Organization
DOC-NOAA-2018-000465	Request	Eleanor Chernoff	
DOC-NOAA-2018-000426	Request	Patrick Wardell	
DOC-NOAA-2018-000423	Request	Rose Santos	FOIA GROUP INC
DOC-NOAA-2018-000389	Request	Rachel Terry	
DOC-NOAA-2018-000509	Request	Catherine Kilduff	Center for Biological Diversity
DOC-NOAA-2018-000462	Request	Robin Baird	Cascadia Research Collective
DOC-NOAA-2018-000424	Request	Paula Blanco	
DOC-NOAA-2018-000422	Request	Philip N. Brown	
DOC-NOAA-2018-000463	Request	John Fulweiler	Fulweiler Ile
DOC-NOAA-2018-000415	Request	Hallie G. Templeton	Friends of the Earth
DOC-NOAA-2018-000408	Request	Ryan P. Mulvey	Cause of Action Institute
DOC-NOAA-2018-000405	Request	Ryan P. Mulvey	Cause of Action Institute
DOC-NOAA-2018-000394	Request	Todd Schmitt	
DOC-NOAA-2018-000420	Request	Anthony M. Barnes	ATA Law Group
DOC-NOAA-2018-000419	Request	Anthony M. Barnes	ATA Law Group
DOC-NOAA-2018-000418	Request	Anthony M. Barnes	ATA Law Group
DOC-NOAA-2018-000387	Request	Ryan P. Mulvey	Cause of Action Institute
DOC-NOAA-2018-000383	Request	Sharyn Taylor	
DOC-NOAA-2018-000377	Request	Alicia Cate	Oceana
DOC-NOAA-2018-000369	Request	Joseph Kakesh	Wiley Rein LLP
DOC-NOAA-2018-000459	Request	Margaret Townsend	
DOC-NOAA-2018-000468	Request	Katarina Zimmer	Self-employed
DOC-NOAA-2018-000494	Request	Aaron Jaehnig	
DOC-NOAA-2018-000428	Request	Ryan P. Mulvey	Cause of Action Institute
DOC-NOAA-2018-000391	Request	Dawn Grossman	Herold & Sager
DOC-NOAA-2018-000370	Request	Joseph Kakesh	Wiley Rein LLP
DOC-NOAA-2018-000477	Request	Michael D. Eriksen	Law Firm
DOC-NOAA-2018-000417	Request	Paul F. Johnston	National Museum of American History
DOC-NOAA-2018-000440	Request	Noah Rosmarin	Adkins, Kelston & Zavez, P.C.
DOC-NOAA-2018-000453	Request	Hallie G. Templeton	Friends of the Earth
DOC-NOAA-2018-000437	Request	Paul Lannus	
DOC-NOAA-2018-000449	Request	Omar Purcell	NOAA
DOC-NOAA-2018-000425	Request	Holly Jablonski	
DOC-NOAA-2018-000467	Request	Pamela Paige Murphy-Youn	

Submitted	Received	Assigned To	Perfected?	Due	Closed Date
12/12/2017	12/12/2017	AGO	Yes	01/17/2018	TBD
12/10/2017	12/11/2017	AGO	Yes	01/18/2018	TBD
12/09/2017	12/11/2017	AGO	Yes	01/16/2018	TBD
12/05/2017	12/05/2017	NESDIS	Yes	01/09/2018	TBD
12/28/2017	12/28/2017	NMFS	Yes	01/30/2018	TBD
12/18/2017	12/18/2017	NMFS	Yes	01/18/2018	12/28/2017
12/10/2017	12/11/2017	NMFS	Yes	01/18/2018	TBD
12/08/2017	12/08/2017	NMFS	Yes	01/16/2018	TBD
12/08/2017	12/08/2017	NMFS	Yes	01/18/2018	TBD
12/07/2017	12/07/2017	NMFS	Yes	01/16/2018	TBD
12/07/2017	12/07/2017	NMFS	Yes	01/16/2018	TBD
12/07/2017	12/07/2017	NMFS	Yes	01/09/2018	TBD
12/06/2017	12/06/2017	NMFS	Yes	01/16/2018	TBD
12/05/2017	12/05/2017	NMFS	Yes	01/11/2018	TBD
12/05/2017	12/05/2017	NMFS	Yes	01/11/2018	TBD
12/05/2017	12/05/2017	NMFS	Yes	01/29/2018	TBD
12/05/2017	12/05/2017	NMFS	Yes	01/09/2018	TBD
12/04/2017	12/04/2017	NMFS	Yes	01/09/2018	TBD
12/01/2017	12/01/2017	NMFS	Yes	01/24/2018	TBD
12/01/2017	12/01/2017	NMFS	Yes	01/09/2018	TBD
12/18/2017	12/18/2017	NMFS	No	TBD	TBD
12/18/2017	12/18/2017	NOAA FOIA	No	TBD	TBD
12/22/2017	12/22/2017	NOAA FOIA	No	TBD	TBD
12/11/2017	12/11/2017	NOAA FOIA	Yes	02/01/2018	TBD
12/05/2017	12/05/2017	NOAA FOIA	No	TBD	12/11/2017
12/01/2017	12/01/2017	NOAA FOIA	No	TBD	12/08/2017
12/20/2017	12/20/2017	NOS	No	TBD	TBD
12/05/2017	12/05/2017	NOS	Yes	01/09/2018	12/27/2017
12/13/2017	12/13/2017	NWS	Yes	01/18/2018	01/02/2018
12/15/2017	12/15/2017	OAR	Yes	01/19/2018	TBD
12/13/2017	12/13/2017	OAR	Yes	01/18/2018	TBD
12/14/2017	12/14/2017	OCAO	Yes	01/18/2018	TBD
12/10/2017	12/11/2017	OMAO	Yes	01/18/2018	TBD
12/12/2017	12/12/2017	WFMO	Yes	01/17/2018	TBD

Status	Dispositions
Assignment Determination	
Research Records	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Closed	Full grant
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
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Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Initial Evaluation	
Submitted	
Initial Evaluation	
Research Records	
Closed	Improper FOIA request for other reason
Closed	Duplicate request
Assignment Determination	
Closed	Full grant
Closed	Full grant
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	

Detail
I am requesting a copy of the NOAA CELCP Siskiwit River Estuary Protection Project submitted in October 2016.
The Hawaii Marine Mammal Alliance has received several grants from NOAA. I would like copies of all of the grant
[Reference FGI 17-55354] relevant to DOCDG133E09CN0094 we seek the following: (1) contract with current SO\
I would like copies of any reports prepared for or by NOAA regarding commercial weather data. Specifically, the via
I'm reviewing a few NMFS denials of ESA listing. I found most of the documents posted online, but I didn't see the
I would like to request GIS shapefiles of a number of excluded areas in the false killer whale critical habitat proposa
Dear FOIA: Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I am requesting access to re
I request the following information through the Freedom of Information Act pertaining to my work as a NMFS fisher
1. Copy of Confirmation of Permit History fur the f/v ALEX MARIE (Doc. Number 1027010). 2. Copies of all permits
Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Friends of the Earth requests all records
Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, CoA Institute hereby requests access to
On April 11, 2017, CoA Institute submitted a comment to the New England and Mid-Atlantic Fishery Management C
Marine Mammal Inventory Dispositions - Deaths - cetaceans and pinnipeds, Acquisitions - wild captures - cetacear
1. Any and all documents generated on or after August 19, 2015 referring to, relating to, or regarding the Arroyo Gr
1. Any and all documents generated on or after August 19, 2015 referring to, relating to, or regarding the [Merced F
1. Any and all documents generated on or after August 19, 2015 referring to, relating to, or regarding the Arroyo Sa
Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, CoA Institute hereby requests access to
All reported necropsy reports for all Cetaceans from Sea World Enterprises Gold Coast, Queensland Australia (No
Oceana requests copies of all documents, records, and materials, including but not limited to all memoranda, studi
Please also see attached letter. Pursuant to the Freedom of Information Act ("FOIA"), as amended, 5 U.S.C. Sectio
The Center requests from National Marine Fisheries Service ("NMFS"): all records generated in connection with the
December 18, 2017 Dear FOIA Officer: This is a request under the Freedom of Information Act. I hereby request th
I am requesting copies of all records related to any conversation or communication between Rhode Island Coastal
1. All weekly reports, charts, and transmittal e-mails that identify "high visibility" or otherwise "sensitive" FOIA reque
Please provide hourly weather data to include rainfall and wind speeds for the Haleakala National Park, Kula HI, 96
Please also see attached letter. Pursuant to the Freedom of Information Act ("FOIA"), as amended, 5 U.S.C. Sectio
See attached letter to Tara Wallace, NOAA, Office of Coast Survey, 1315 East-West Hwy., #7350, Silver Springs,
A report that was produced from when some NOAA staff had gone to the Premier/RMS Titanic, Inc. warehouse of
Please provide all wind warnings, wind watches, and wind advisories for the Winthrop, Massachusetts, and Winthr
Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Friends of the Earth requests all records
Under Title 5 of the United States Code Section 552 and the California Public Records Act, I hereby request an op
I would like a copy of final findings or response made by the inquiry officials at NMFS for OIG complaint number 17
NOAA Office of Marine and Aviation Operations (OMAO), Marine Operations Center (MOC) Customer Satisfaction
A former NOAA employee, I am requesting records in response to a Social Security Administration (SSA) requirem

: progress reports they submitted detailing their progress in these grants. In particular, I'm interested in v
/W/PWS; and attachments, modifications
ability, feasibility, accessibility, etc. of NOAA or related agencies buying weather data from a private part
NMFS decision memos. Can you please email them to me? · Bumphead parrotfish · Qu
al through FOIA. The particular shapefiles we are looking for are the boundaries of Warning Area 187, th
ports for SeaWorld San Diego, Marineland of Canada and Barcelona Zoo on pinniped historical transfer
ies observer in the Pacific Islands Regional Observer Program from 2006 through my last trip and subs
s including, but not limited to, access and moratorium permits for the f/v ALEX MARIE (Doc. Number 10
pertaining to any environmental review, assessment, consultation, or other procedures conducted the N
o all weekly editions of “Dock Buzz” from the first week of April 2017 to the present. * * * Please see the
Councils, and the National Oceanic and Atmospheric Administration (“NOAA”) Greater Atlantic Regional
ns and pinnipeds, Acquisitions - birth - cetaceans and pinnipeds
rande Creek flow rates, for five miles above and below the diversion to the Lopez Dam. 2. Any and all do
River] flow rates, for five miles above and below the Pilarcitos Dam. 2. Any and all documents generated
ausal Creek and/or the Walker Creek flow rates, for five miles above and below the Soulajule Dam. 2. A
o all issues of “Fathoms,” a NOAA-generated publication of the Greater Atlantic Regional Office, publish
w known As Sea WorldGold Coast) from 1971-2017
ies, reports, data, correspondence, comments, conversation records, meeting notes, files, electronic ma
on 552, and the Department of Commerce (“Department”) rules issued thereunder, 15 C.F.R. Part 4, I a
e denial of the Pacific bluefin tuna listing petition under the Endangered Species Act, 16 U.S.C. §&
ne following records: All records, including but not limited to, reports, memos and communications (elec
Resources Management Council (CRMC) and National Oceanic and Atmospheric Administration (NOA
ests. The time period for this item of the request is December 2015 to the present. 2. All memoranda, gu
6790 from the week of September 21, 2015 up to and including September 28, 2015.
on 552, and the Department of Commerce (“Department”) rules issued thereunder, 15 C.F.R. Part 4, I a
MD 20906; e-mail: tara.wallace@noaa.gov; ph: 240-847-8102 (incorporated by reference). Ms. Wallace
Titanic collections in Atlanta some time ago.
op Harbor, Massachusetts, areas (or nearest to those areas) issued at any time on October 23, 2016. T
pertaining to any environmental review, assessment, consultation, or other procedures conducted the N
portunity to inspect or obtain copies of the following records that pertain to the ship, USC&GSS Pio
7-0561. The investigation was handled by Kirk Essmyer. The focus of the OIG complaint was Jeff Rador
Surveys submitted by the scientific parties, and any attached comments or related notes on record, for
nent for documentation relevant to my appeal of the SSA’s initial benefits determination. Specifically, the

[redacted]

vhat they state they have done in regards to educational school programs administered by Kathy Brown.

y.
ueen Conch · Smooth hammerhead · Humphead wrasse · Reef manta ray &mi
ne Kingfisher Range, the Ewa Training Minefield, and the combined Warning Area 188 A and B and PM
s and status, including living and deceased animals, and origin of birth. I would like pinniped species to
equent decertification or ineligibility as an observer in this program: 1) All my sea time with dates of emb
27010). 3. Copies of all completed Applications for Vessel Replacement, Upgrade, and Confirmation of
lational Oceanic and Atmospheric Administration (NOAA) pursuant to the National Environmental Policy
attached PDF for a complete description of CoA Institute's FOIA request.
Fisheries Office, concerning the draft Industry-Funded Monitoring (IMF) Omnibus Amendment. Specific

ocuments generated on or after August 19, 2015 referring to, relating to, or regarding impacts on any sp
l on or after August 19, 2015 referring to, relating to, or regarding impacts on any species listed pursuan
ny and all documents generated on or after August 19, 2015 referring to, relating to, or regarding impact
ed between December 1, 2015 and the present. You may exclude from the scope of this request the Ap

il records, or other documents, which have been generated, received, kept, and/or considered by NMF
m requesting the following records: (1) Any and all FOIA requests submitted in 2017 to the Department,
sect; 1531-1544 ("ESA"). See Attachment A (12 Month Decision Not To List Pacific Bluefin Tuna).
tronic, physical and otherwise sent or received by representatives of this agency), regarding an investiga
A) regarding or related to federal preemption of any CRMC regulatory standards related but not limited
idelines, procedures, processing metrics, or communications concerning any type of "sensitive review,"

m requesting the following records: (1) Any and all records provided by the Department or any compone
has informed us that she and her office are the proper NOAA division/employees to comply with this F

he requested materials include: each individual warning, watch, and advisory issued; the time at which
lational Oceanic and Atmospheric Administration (NOAA) pursuant to any environmental and wildlife pro
neer (OSS-31). • Ship/captain's logs for the USC&GSS Pioneer (OSS-31). • Documents concernin
ski. The final response or findings was sent to OCAO.
all NOAA Ship Nancy Foster cruises between the dates of 01 March 2012 and 28 February 2013. This i
SSA is requiring documents: 1) Showing that I am not (and have not been) receiving monthly pension b

Several people have informed me that the HMMA claims to have been solely responsible for these prog

ddot; Bigeye thresher · Common thresher
RF offshore area as shown in the FR notice for the proposed rule (i.e., those areas out to the 3,200 m d
be California sea lions and harbor seals.
arkation and disembarkation, number of sea days, and names of vessels; 2) All performance evaluation
History for the f/v ALEX MARIE (Doc. Number 102701 O).
Act, 42 U.S.C. § 4321 et seq., and/or the Endangered Species Act, 16 U.S.C. § 1531 et seq.,

cally, CoA Institute expressed concern over the lack of statutory authority for the Councils and NOAA to

ecies listed pursuant to the Federal Endangered Species Act (ESA) or the California Endangered Specie
t to the Federal Endangered Species Act (ESA) or the California Endangered Species Act (CESA) in the
s on any species listed pursuant to the Federal Endangered Species Act (ESA) or the California Endang
ril 1– 15, 2017 issue of Fathoms, which has been already disclosed in response to another FOIA reques

S and/or NOAA relating to OMB's review of the Final Rule with RIN 0648-BG45.
NOAA, NMFS, or any component thereof (including but not limited to the June 27, 2017 FOIA request s

ation with case number PI1501648. According to a NOAA Public Affairs officer, this investigation was co
to application 2016-10-99, National Grid Fields Point Liquefaction Facility since October 2015
or handling of "high visibility" FOIA requests, including politically-sensitive requests or those submitted b

ent thereof to any person in response to FOIA requests submitted in 2017 to the Department, NOAA, NM
OIA request.

each warning, watch, and advisory was issued; and the duration of time in which each warning, watch, a
tection or conservation laws, including but not limited to, the National Environmental Policy Act, 42 U.S.
g the presence or remediation (including abatement) of asbestoscontaining materials aboard or from the

ncludes, but is not limited to, the following cruises: NF-12-02, NF-12-03, NF-12-04, NF-12-05, NF-12-06
benefits associated with my work for NOAA; and 2) Providing proof of the amount of any lump sum paym

grams during a time period that the Monk Seal Foundation was paying for the programs to operate unde

epth contour).

ıs made by NMFS and/or Techsea International, Inc. staff after each trip; 3) The original complaint from

with regard to NOAA's recent request for proposals as part of its regional aquaculture pilot project.

compel regulated parties to pay for supplemental at-sea monitoring services. Pursuant to the Freedom c

es Act (CESA) in the Arroyo Grande Creek. 3. Any and all documents generated on or after August 19, 2
e Pilarcitos Creek. 3. Any and all documents generated on or after August 19, 2015 referring to, relating
gered Species Act (CESA) in the Arroyo Sausal Creek and/or the Walker Creek. 3. Any and all documer
st. Please see the attached PDF for a complete description of CoA Institute's FOIA request.

submitted by the Center for Biological Diversity with the FOIA request record DOC-NOAA-2017-001431)

nducted by NOAA's Office of Law Enforcement and forwarded to NOAA's Office of General Counsel, Er

by news-media requesters. The scope of this item includes records defining or describing "high visibility"

MFS, or any component thereof (including but not limited to the June 27, 2017 FOIA request submitted b

nd advisory was in effect. Thank you.
C. § 4321 et seq., and/or the Endangered Species Act, 16 U.S.C. § 1531 et seq., with regard t
e USC&GSS Pioneer (OSS-31). • Documents concerning the repair, overhaul or maintenance of th

5, and NF-12-07.
ıent received and the effective date of such payment. The Social Security Administration requires that su

r a grant from Schofield Barracks Wives Club. PLEASE NOTE, I do not know if HMMA has actually mac

Morgan Lynne Miller filed with NMFS detailing my alleged offenses; 4) Any communications between NI

of Information Act ("FOIA"), 5 U.S.C. § 552, CoA Institute hereby requests access to the following: A

2015 referring to, relating to, or regarding any efforts to mitigate any impact of the Lopez Dam or water d
to, or regarding any efforts to mitigate any impact of the Pilarcitos Dam, on any species. 4. Any and all d
nts generated on or after August 19, 2015 referring to, relating to, or regarding any efforts to mitigate any

requesting any records relating to draft and/or final biological evaluations of malathion under the Endan

nforcement Section on March 7, 2017, for consideration of prosecution. The Enforcement Section declin

requests or pertaining to the justification and/or genesis of the weekly reports sought in Item One. The t

y the Center for Biological Diversity with the FOIA request record DOC-NOAA-2017-001431) requesting

to NOAA's recent announcement of the National Sea Grant College Program 2018 Ocean, Coastal and
e USC&GSS Pioneer (OSS- 31). • Photographs of the interior of the USC&GSS Pioneer (OS

uch proof "be the original or a certified copy from your previous employer . . .showing the pension amour

[redacted]

de these claims or not so I would like to see the reports to verify the veracity of what I have been told.

MFS and the observer providers pertaining to my performance; 5) Written documentation of NOAA's rea

All records concerning the aforementioned April 2017 comment, including any correspondence between

liversions of or to the Lopez Dam, on any species. 4. Any and all documents generated on or after Augu
locuments generated on or after August 19, 2015 referring to, relating to, or regarding water usage or wa
impact of the Soulajule Dam, on any species. 4. Any and all documents generated on or after August 1

gered Species Act ("ESA"); (2) Any and all FOIA requests submitted in 2017 to the Department, NOAA,

ed prosecution on December 8, 2017. I do not expect any exemptions to apply to my request as the cas

ime period for this item of the request is January 2010 to the present. 3. All communications (including c

records relating to draft and/or final biological evaluations of malathion under the Endangered Species

Great Lakes National Aquaculture Initiative.
S-31). • Photographs of the exterior of the USC&GSS Pioneer (OSS-31). Documents identifying the

nt and effective date."

[redacted]

ısoning for placing a hold on my data; 6) Any communication between NMFS and anyone where my nam

or amongst members of the New England and Mid-Atlantic Councils; officials, employees, or representa

st 19, 2015 referring to, relating to, or regarding water usage or water diversions on the Arroyo Grande C
ater diversions on the Pilarcitos Creek related to the Pilarcitos Dam. 5. Any and all documents generated
9, 2015 referring to, relating to, or regarding water usage or water diversions on the Arroyo Sausal Cree

NMFS or any component thereof (including but not limited to the June 27, 2017 FOIA request submitted

e is now closed. In the event of any exemptions in my request, please detail the use of any exemptions i

case summaries, memoranda, guidelines, or procedures) concerning the tracking of “transition cases,” i

Act (“ESA”); (2) Any and all records provided by the Department or any component thereof to any person

e commanding officer, officers, sailors and those aboard the USC&GSS Pioneer (OSS-31) during t

[redacted]

ne is mentioned; 7) Any statements before and after September 12, 2017 alleging any misconduct by me

atives of NOAA; or any other third party. The time period for this request is April 11, 2017 to the present.

Creek related to the Lopez Dam. 5. Any and all documents generated on or after August 19, 2015 referri
d on or after August 19, 2015 referring to, relating to, or regarding water quality in the Pilarcitos Creek, ir
k and/or the Walker Creek related to the Soulajule Dam. 5. Any and all documents generated on or afte

d by the Center for Biological Diversity with the FOIA request record DOC-NOAA-2017-001431) requesti

including references. If any of the above records cannot be provided due to an exemption or other reasc

.e., FOIA requests pertaining to the incoming Trump Administration. The scope of this item includes rec

n in response to FOIA requests submitted in 2017 to the Department, NOAA, NMFS, or any component

he relevant time period of 1956-1958. • Ship/captain's logs for the USS Mobjack (AGP-7), the predeces

e during the course of my employment as an observer for this observer program. 8) Any information on t

Search terms may include, but are not limited to, “Cause of Action,” “CoA,” “Julie Smith,” “Eric Bo

ng to, relating to, or regarding water quality in the Arroyo Grande Creek, including bu
ncluding but not limited to, federal Clean Water Act compliance and im
r August 19, 2015 referring to, relating to, or regarding water quality in the Arroyo Sa

ng any records relating to draft and/or final biological evaluations of diazinon under the Endangered Spe

ons, I request that those records to which this does not apply be provided to me. I also request th

ords of correspondence between and amongst NOAA and (1) the Depar

thereof (including but not limited to the June 27, 2017 FOIA request submitted by the Center for Biologic

sor to the USC&GSS Pioneer (OSS-31).

[redacted]

the cas

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Tracking Number	Type	Requester
DOC-NOAA-2018-000465	Request	Eleanor Chernoff
DOC-NOAA-2018-000426	Request	Patrick Wardell
DOC-NOAA-2018-000423	Request	Rose Santos
DOC-NOAA-2017-000298	Request	Charles Mouton
DOC-NOAA-2018-000325	Request	Rose Santos
DOC-NOAA-2015-001487	Request	Richard Knudsen
DOC-NOAA-2018-000303	Request	Ronald B. Hardwig
DOC-NOAA-2018-000449	Request	Omar Purcell
DOC-NOAA-2017-001966	Request	Alex Kotch
DOC-NOAA-2018-000389	Request	Rachel Terry
DOC-NOAA-2017-000613	Request	Dan Vergano
DOC-NOAA-2018-000509	Request	Catherine Kilduff
DOC-NOAA-2016-000423	Request	Ryan P. Mulvey
DOC-NOAA-2018-000459	Request	Margaret Townsend
DOC-NOAA-2018-000424	Request	Paula Blanco
DOC-NOAA-2018-000422	Request	Philip N. Brown
DOC-NOAA-2018-000463	Request	John Fulweiler
DOC-NOAA-2018-000415	Request	Hallie G. Templeton
DOC-NOAA-2018-000408	Request	Ryan P. Mulvey
DOC-NOAA-2018-000405	Request	Ryan P. Mulvey
DOC-NOAA-2018-000394	Request	Todd Schmitt
DOC-NOAA-2018-000420	Request	Anthony M. Barnes
DOC-NOAA-2018-000419	Request	Anthony M. Barnes
DOC-NOAA-2018-000418	Request	Anthony M. Barnes
DOC-NOAA-2018-000387	Request	Ryan P. Mulvey
DOC-NOAA-2018-000383	Request	Sharyn Taylor
DOC-NOAA-2018-000377	Request	Alicia Cate
DOC-NOAA-2018-000369	Request	Joseph Kakesh
DOC-NOAA-2017-000304	Request	Bryn Blomberg
DOC-NOAA-2018-000433	Request	James Buchal
DOC-NOAA-2017-000226	Request	Emma Hiolski
DOC-NOAA-2018-000320	Request	Chloe Sorvino
DOC-NOAA-2018-000318	Request	Sarah N. Emerson
DOC-NOAA-2018-000316	Request	Lindsey Collom
DOC-NOAA-2017-000170	Request	Kara McKenna
DOC-NOAA-2015-000190	Request	Miyo Sakashita
DOC-NOAA-2018-000180	Request	James McNally
DOC-NOAA-2018-000177	Request	Roberta Goodman
DOC-NOAA-2018-000183	Request	Sean Sherman
DOC-NOAA-2018-000182	Request	PAMELA H. SILKWOOD
DOC-NOAA-2018-000126	Request	HASSELMAN, JAN
DOC-NOAA-2018-000124	Request	Thomas T. Alspach
DOC-NOAA-2018-000105	Request	Allan Parachini
DOC-NOAA-2018-000077	Request	Maraya Cornell
DOC-NOAA-2017-000034	Request	Christopher T. Clack
DOC-NOAA-2018-000070	Request	Cathy Readinger
DOC-NOAA-2017-001974	Request	Ryan P. Mulvey
DOC-NOAA-2016-001763	Request	Thomas Knudson
DOC-NOAA-2016-001751	Request	Thomas Knudson
DOC-NOAA-2017-001798	Request	Brett Sommermeyer
DOC-NOAA-2017-001741	Request	Vivian Wang

DOC-NOAA-2017-001729	Request	Robert Boesch
DOC-NOAA-2014-001474	Request	Eric Huber
DOC-NOAA-2017-001710	Request	Rick Steiner
DOC-NOAA-2017-001606	Request	Molly Masterton
DOC-NOAA-2016-001479	Request	Christopher Hudak
DOC-NOAA-2017-001431	Request	Margaret Townsend
DOC-NOAA-2016-001402	Request	Stephen S. Schwartz
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-2017-001376	Request	Gabe Flick
DOC-NOAA-2017-001316	Request	Chris Saeger
DOC-NOAA-2017-001285	Request	Jared S. Goodman
DOC-NOAA-2017-001220	Request	Nathan Eagle
DOC-NOAA-2017-001219	Request	Nathan Eagle
DOC-NOAA-2017-001217	Request	Nathan Eagle
DOC-NOAA-2017-001198	Request	Brett Sommermeyer
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-2017-001038	Request	Sean Sherman
DOC-NOAA-2016-000959	Request	Office Administrator
DOC-NOAA-2017-000994	Request	Mariel Combs
DOC-NOAA-2017-000744	Request	Zeenat Mian
DOC-NOAA-2018-000468	Request	Katarina Zimmer
DOC-NOAA-2018-000494	Request	Aaron Jaehnig
DOC-NOAA-2017-000361	Request	Peter Shelley
DOC-NOAA-2018-000428	Request	Ryan P. Mulvey
DOC-NOAA-2018-000213	Request	Rachel S. Bradshaw
DOC-NOAA-2017-001915	Request	Rose Santos
DOC-NOAA-2017-001912	Request	Micah Maidenberg
DOC-NOAA-2016-001786	Request	Ana Gutierrez
DOC-NOAA-2018-000477	Request	Michael D. Eriksen
DOC-NOAA-2018-000380	Request	Laura G. Shields
DOC-NOAA-2017-000268	Request	Brian D. Israel
DOC-NOAA-2018-000273	Request	Andrew G. Ogden
DOC-NOAA-2018-000202	Request	Marshall R. Morales
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-2017-001009	Request	Edward Duhe
DOC-NOAA-2017-000414	Request	Arnold & Porter Kaye Scholer LLP
DOC-NOAA-2018-000322	Request	Jacob R. Beck
DOC-NOAA-2017-001928	Request	Jacob Holle
DOC-NOAA-2017-001874	Request	Susanne Rust
DOC-NOAA-2017-001757	Request	Jacob Holle
DOC-NOAA-2017-001059	Request	Richard Hirn
DOC-NOAA-2017-000768	Request	Julio C. Gomez
DOC-NOAA-2018-000453	Request	Hallie G. Templeton

DOC-NOAA-2018-000229	Request	Nicole Mason
DOC-NOAA-2017-000058	Request	Christopher T. Clack
DOC-NOAA-2018-000024	Request	Allan Blutstein
DOC-NOAA-2014-001694	Request	Lawrence A. Kogan
DOC-NOAA-2017-001871	Request	Douglas Mackenzie
DOC-NOAA-2017-001825	Request	Robert A. Shuchman
DOC-NOAA-2017-001796	Request	Margaret Townsend
DOC-NOAA-2017-001975	Request	Margaret Townsend
DOC-NOAA-2017-001691	Request	David Kovar
DOC-NOAA-2017-001680	Request	Robert Shuchman
DOC-NOAA-2017-001403	Request	Robert Shuchman
DOC-NOAA-2014-000714	Request	Lawrence Kogan
DOC-NOAA-2018-000437	Request	Paul Lannus
DOC-NOAA-2017-001954	Request	Alex Veeneman
DOC-NOAA-2017-001523	Request	Brian L. Kahn
DOC-NOAA-2017-001565	Request	Charles Seife
DOC-NOAA-2018-000302	Request	Michael L. Johnson
DOC-NOAA-2018-000204	Request	Nicole Mason
DOC-NOAA-2017-001163	Request	Jacqueline Iwata
DOC-NOAA-2017-001101	Request	Ryan P. Mulvey
DOC-NOAA-2018-000425	Request	Holly Jablonski
DOC-NOAA-2018-000181	Request	Lieutenant Anna-Liza Villard-Howe
DOC-NOAA-2017-001967	Request	Jennifer E. Kollmer
DOC-NOAA-2018-000145	Request	Madeleine Stone
DOC-NOAA-2017-001756	Request	Jeff Tollefson
DOC-NOAA-2017-001745	Request	Michael Ravnitzky
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-2018-000467	Request	Pamela Paige Murphy-Youn
DOC-NOAA-2017-001760	Request	John Harding

Requester Organization	Submitted	Received	Assigned To
	12/12/2017	12/12/2017	AGO
	12/10/2017	12/11/2017	AGO
FOIA GROUP INC	12/09/2017	12/11/2017	AGO
Mahtook & Lafleur	11/30/2016	11/30/2016	AGO
FOIA GROUP INC	11/22/2017	11/22/2017	AGO
	06/29/2015	06/29/2015	AGO
	11/17/2017	11/17/2017	CAO
NOAA	12/14/2017	12/14/2017	CAO
	09/15/2017	09/15/2017	LA
	12/05/2017	12/05/2017	NESDIS
BuzzFeed News	02/07/2017	02/07/2017	NESDIS
Center for Biological Diversity	12/28/2017	12/28/2017	NMFS
Cause of Action	12/21/2015	12/21/2015	NMFS
	12/18/2017	12/18/2017	NMFS
	12/10/2017	12/11/2017	NMFS
	12/08/2017	12/08/2017	NMFS
Fulweiler Ile	12/08/2017	12/08/2017	NMFS
Friends of the Earth	12/07/2017	12/07/2017	NMFS
Cause of Action Institute	12/07/2017	12/07/2017	NMFS
Cause of Action Institute	12/07/2017	12/07/2017	NMFS
	12/06/2017	12/06/2017	NMFS
ATA Law Group	12/05/2017	12/05/2017	NMFS
ATA Law Group	12/05/2017	12/05/2017	NMFS
ATA Law Group	12/05/2017	12/05/2017	NMFS
Cause of Action Institute	12/05/2017	12/05/2017	NMFS
	12/04/2017	12/04/2017	NMFS
Oceana	12/01/2017	12/01/2017	NMFS
Wiley Rein LLP	12/01/2017	12/01/2017	NMFS
Western Resources Legal Center	11/30/2016	11/30/2016	NMFS
Murphy & Buchal LLP	11/29/2017	11/29/2017	NMFS
	11/29/2016	11/29/2016	NMFS
Forbes Magazine	11/21/2017	11/21/2017	NMFS
VICE	11/21/2017	11/21/2017	NMFS
The Arizona Republic	11/21/2017	11/21/2017	NMFS
Cause of Action	11/09/2016	11/09/2016	NMFS
Center for Biological Diversity	11/02/2014	11/03/2014	NMFS
QUINTAIROS, PRIETO, WOOD Be BOYER, P.A.	10/30/2017	10/30/2017	NMFS
	10/29/2017	10/30/2017	NMFS
Public Citizen, Inc	10/25/2017	10/25/2017	NMFS
HORAN LLOYD	10/25/2017	10/25/2017	NMFS
Earthjustice	10/18/2017	10/18/2017	NMFS
Sea Watch International, Ltd.	10/18/2017	10/18/2017	NMFS
The Garden Island, Lihue, HI	10/16/2017	10/16/2017	NMFS
Freelance Writer	10/11/2017	10/11/2017	NMFS
	10/11/2016	10/11/2016	NMFS
	10/03/2017	10/03/2017	NMFS
Cause of Action Institute	09/21/2017	09/21/2017	NMFS
Center for Investigative Reporting	09/14/2016	09/15/2016	NMFS
Center for Investigative Reporting	09/14/2016	09/14/2016	NMFS
	08/31/2017	08/31/2017	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
Oasis Earth	08/01/2017	08/01/2017	NMFS
Natural Resources Defense Council	07/26/2017	07/26/2017	NMFS
Environmental Advocates	07/20/2016	07/21/2016	NMFS
	06/27/2017	06/27/2017	NMFS
Cause of Action Institute	06/27/2016	06/27/2016	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
	06/12/2017	06/12/2017	NMFS
Western Values Project	06/07/2017	06/07/2017	NMFS
PETA Foundation	05/30/2017	05/31/2017	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
	05/11/2017	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
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
	03/08/2017	03/08/2017	NMFS
Self-employed	12/18/2017	12/18/2017	NOAA FOIA
	12/22/2017	12/22/2017	NOAA FOIA
Conservation Law Foundation	12/22/2016	12/22/2016	NOAA FOIA
Cause of Action Institute	12/11/2017	12/11/2017	NOAA FOIA
ReidGoodwin	11/03/2017	11/03/2017	NOAA FOIA
FOIA GROUP INC	09/23/2017	09/25/2017	NOAA FOIA
Reporting Fellow, Columbia University School of Journalism	09/22/2017	09/22/2017	NOAA FOIA
	09/20/2016	09/20/2016	NOAA FOIA
Law Firm	12/20/2017	12/20/2017	NOS
	12/04/2017	12/04/2017	NOS
ARNOLD & PORTER LLP	11/28/2016	11/28/2016	NOS
Turtle Island Restoration Network	11/14/2017	11/14/2017	NOS
Beveridge and Diamond	11/01/2017	11/01/2017	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
LISKOW & LEWIS	03/31/2017	03/31/2017	NOS
Arnold & Porter Kaye Scholer LLP	01/09/2017	01/09/2017	NOS
	11/21/2017	11/21/2017	NWS
Physical Optics Corporation	09/18/2017	09/18/2017	NWS
Columbia University - Graduate School of Journalism	09/18/2017	09/18/2017	NWS
Physical Optics Corporation	08/24/2017	08/24/2017	NWS
National Weather Service Employees	04/18/2017	04/18/2017	NWS
GOMEZ LLC Attorney At Law	03/10/2017	03/10/2017	NWS
Friends of the Earth	12/15/2017	12/15/2017	OAR

	11/03/2017	11/03/2017	OAR
	10/13/2016	10/13/2016	OAR
America Rising Squared	10/04/2017	10/04/2017	OAR
Institute for Trade, Standards and Sustainable Development	09/22/2014	09/22/2014	OAR
	09/16/2017	09/18/2017	OAR
Michigan Technological University, MTRI	09/08/2017	09/08/2017	OAR
Center for Biological Diversity	08/31/2017	08/31/2017	OAR
	08/31/2017	08/31/2017	OAR
	08/10/2017	08/10/2017	OAR
MTRI, MTU	08/09/2017	08/09/2017	OAR
MTRI, Michigan Technological University	06/20/2017	06/20/2017	OAR
ITSSD	03/26/2014	03/26/2014	OAR
	12/13/2017	12/13/2017	OAR
Kettle Magazine, London	09/28/2017	09/28/2017	OC
Climate Central	07/14/2017	07/14/2017	OC
	06/19/2017	06/19/2017	OC
	11/13/2017	11/13/2017	OGC
	11/01/2017	11/01/2017	OGC
Natural Resources Defense Council	05/05/2017	05/05/2017	OGC
Cause of Action	04/27/2017	04/27/2017	OGC
	12/10/2017	12/11/2017	OMAO
	10/24/2017	10/24/2017	OMAO
Rolls-Royce Marine North America Inc.	09/22/2017	09/22/2017	OMAO
Gizmodo	10/22/2017	10/23/2017	USEC
Nature	08/24/2017	08/24/2017	USEC
	08/22/2017	08/22/2017	USEC
	08/22/2017	08/22/2017	USEC
ProPublica	08/21/2017	08/21/2017	USEC
	08/21/2017	08/21/2017	USEC
	12/12/2017	12/12/2017	WFMO
Martin Kane & Kuper	08/16/2017	08/16/2017	WFMO

Perfected?	Due	Closed Date	Status	Dispositions
Yes	01/17/2018	TBD	Assignment Determination	
Yes	01/18/2018	TBD	Research Records	
Yes	01/16/2018	TBD	Assignment Determination	
Yes	01/13/2017	TBD	Assignment Determination	
Yes	01/09/2018	TBD	Assignment Determination	
Yes	07/31/2015	TBD	Assignment Determination	
Yes	12/20/2017	TBD	Final Preparation of Response	No records
Yes	01/18/2018	TBD	Assignment Determination	
Yes	11/08/2017	TBD	Evaluation of Records	
Yes	01/09/2018	TBD	Assignment Determination	
Yes	03/29/2017	TBD	Evaluation of Records	
Yes	01/30/2018	TBD	Assignment Determination	
Yes	02/04/2016	TBD	Evaluation of Records	
No	TBD	TBD	Initial Evaluation	
Yes	01/18/2018	TBD	Assignment Determination	
Yes	01/16/2018	TBD	Assignment Determination	
Yes	01/18/2018	TBD	Assignment Determination	
Yes	01/16/2018	TBD	Assignment Determination	
Yes	01/16/2018	TBD	Assignment Determination	
Yes	01/09/2018	TBD	Assignment Determination	
Yes	01/16/2018	TBD	Assignment Determination	
Yes	01/11/2018	TBD	Assignment Determination	
Yes	01/11/2018	TBD	Assignment Determination	
Yes	01/29/2018	TBD	Assignment Determination	
Yes	01/09/2018	TBD	Assignment Determination	
Yes	01/09/2018	TBD	Assignment Determination	
Yes	01/24/2018	TBD	Assignment Determination	
Yes	01/09/2018	TBD	Assignment Determination	
Yes	01/13/2017	TBD	Research Records	
Yes	01/26/2018	TBD	Assignment Determination	
Yes	12/22/2017	TBD	Research Records	
Yes	01/24/2018	TBD	Assignment Determination	
Yes	01/09/2018	TBD	Assignment Determination	
Yes	01/09/2018	TBD	Assignment Determination	
Yes	01/05/2017	TBD	Research Records	
Yes	12/05/2014	TBD	Research Records	
Yes	12/05/2017	TBD	Assignment Determination	
Yes	12/05/2017	TBD	Assignment Determination	
Yes	12/13/2017	TBD	Assignment Determination	
Yes	01/25/2018	TBD	Assignment Determination	
Yes	11/21/2017	TBD	Assignment Determination	
Yes	12/06/2017	TBD	Evaluation of Records	
Yes	11/16/2017	TBD	Research Records	
Yes	12/01/2017	TBD	Evaluation of Records	
Yes	11/09/2016	TBD	Research Records	
Yes	12/14/2017	TBD	Evaluation of Records	
Yes	11/21/2017	TBD	Research Records	
Yes	10/27/2016	TBD	Evaluation of Records	
Yes	10/28/2016	TBD	Evaluation of Records	
Yes	10/25/2017	TBD	Research Records	
Yes	10/06/2017	TBD	Evaluation of Records	

Yes	09/19/2017	TBD	Research Records
Yes	09/10/2014	TBD	Evaluation of Records
Yes	12/29/2017	TBD	Evaluation of Records
Yes	09/21/2017	TBD	Evaluation of Records
Yes	09/22/2016	TBD	Research Records
Yes	07/28/2017	TBD	Evaluation of Records
Yes	08/19/2016	TBD	Assignment Determination
Yes	07/28/2017	TBD	Research Records
Yes	08/10/2017	TBD	Evaluation of Records
Yes	08/11/2017	TBD	Evaluation of Records
Yes	08/01/2017	TBD	Evaluation of Records
Yes	07/26/2017	TBD	Research Records
Yes	07/21/2017	TBD	Research Records
Yes	07/13/2017	TBD	Evaluation of Records
Yes	08/16/2017	TBD	Research Records
Yes	06/20/2017	TBD	Research Records
Yes	06/20/2017	TBD	Evaluation of Records
Yes	07/21/2017	TBD	Research Records
Yes	06/22/2017	TBD	Assignment Determination
Yes	06/22/2017	TBD	Evaluation of Records
Yes	07/03/2017	TBD	Assignment Determination
Yes	07/03/2017	TBD	Assignment Determination
Yes	07/03/2017	TBD	Research Records
Yes	05/16/2017	TBD	Research Records
Yes	05/25/2016	TBD	Final Preparation of Response
Yes	05/09/2017	TBD	Assignment Determination
Yes	04/06/2017	TBD	Research Records
No	TBD	TBD	Submitted
No	TBD	TBD	Initial Evaluation
No	TBD	TBD	Initial Evaluation
Yes	02/01/2018	TBD	Research Records
No	TBD	TBD	Assignment Determination
Yes	10/26/2017	TBD	Assignment Determination
Yes	10/25/2017	TBD	Evaluation of Records
No	TBD	TBD	Assignment Determination
No	TBD	TBD	Assignment Determination
Yes	01/09/2018	TBD	Assignment Determination
Yes	01/10/2017	TBD	Assignment Determination
Yes	12/14/2017	TBD	Assignment Determination
Yes	12/19/2017	TBD	Assignment Determination
Yes	09/19/2017	TBD	Assignment Determination
Yes	10/02/2017	TBD	Assignment Determination
Yes	09/05/2017	TBD	Research Records
Yes	05/23/2017	TBD	Research Records
Yes	03/07/2017	TBD	Research Records
Yes	01/09/2018	TBD	Assignment Determination
Yes	10/25/2017	TBD	Assignment Determination
Yes	10/24/2017	TBD	Assignment Determination
No	TBD	TBD	Assignment Determination
Yes	05/19/2017	TBD	Research Records
Yes	04/12/2017	TBD	Research Records
Yes	01/19/2018	TBD	Assignment Determination

Yes	12/05/2017	TBD	Assignment Determination
Yes	11/25/2016	TBD	Research Records
Yes	11/16/2017	TBD	Assignment Determination
Yes	10/22/2014	TBD	Assignment Determination
Yes	10/17/2017	TBD	Estimate Costs
Yes	10/13/2017	TBD	Assignment Determination
Yes	10/25/2017	TBD	Assignment Determination
Yes	10/30/2017	TBD	Assignment Determination
Yes	09/19/2017	TBD	Assignment Determination
Yes	09/19/2017	TBD	Assignment Determination
Yes	07/25/2017	TBD	Final Preparation of Response Partial grant/partial denial
Yes	05/13/2014	TBD	Assignment Determination
Yes	01/18/2018	TBD	Assignment Determination
Yes	11/08/2017	TBD	Evaluation of Records
Yes	08/16/2017	TBD	Assignment Determination
Yes	08/30/2017	TBD	Research Records
Yes	12/18/2017	TBD	Assignment Determination
Yes	12/01/2017	TBD	Assignment Determination
Yes	06/16/2017	TBD	Assignment Determination
Yes	06/16/2017	TBD	Assignment Determination
Yes	01/18/2018	TBD	Assignment Determination
Yes	01/05/2018	TBD	Research Records
Yes	11/08/2017	TBD	Assignment Determination
Yes	11/21/2017	TBD	Final Preparation of Response Partial grant/partial denial
Yes	09/22/2017	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	01/17/2018	TBD	Assignment Determination
Yes	10/10/2017	TBD	Assignment Determination

Detail
I am requesting a copy of the NOAA CELCP Siskiwit River Estuary Protection Project submitted in October 2016.
The Hawaii Marine Mammal Alliance has received several grants from NOAA. I would like copies of all of the grant
[Reference FGI 17-55354] relevant to DOCDG133E09CN0094 we seek the following: (1) contract with current SO\
We are representing Harvest Pipeline Company in connection with an incident which occurred on 5 September 20
[Reference FGI# 17- 55085-B] Relevant to DOCST133016NC1161 we seek [1] copy of the contract title page (1st
I request an April 1, 2009 Blanked Purchase Agreement (BPA) order for Verizon Wireless wireless supplies-and se
The final report for Case Number 17-1346
I would like a copy of final findings or response made by the inquiry officials at NMFS for OIG complaint number 17
All correspondence from these selected Texas members of Congress (listed below) and their staff members, Texa
I would like copies of any reports prepared for or by NOAA regarding commercial weather data. Specifically, the via
Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of any ag
I'm reviewing a few NMFS denials of ESA listing. I found most of the documents posted online, but I didn't see the
All records of communications between (i) Eileen Sobeck, Assistant Administrator for Fisheries; (ii) Samuel Rauch,
The Center requests from National Marine Fisheries Service ("NMFS"): all records generated in connection with th
Dear FOIA: Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I am requesting access to re
I request the following information through the Freedom of Information Act pertaining to my work as a NMFS fisher
1. Copy of Confirmation of Permit History fur the f/v ALEX MARIE (Doc. Number 1027010). 2. Copies of all permits
Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Friends of the Earth requests all records
Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, CoA Institute hereby requests access to
On April 11, 2017, CoA Institute submitted a comment to the New England and Mid-Atlantic Fishery Management
Marine Mammal Inventory Dispositions - Deaths - cetaceans and pinnipeds, Acquisitions - wild captures - cetacean
1. Any and all documents generated on or after August 19, 2015 referring to, relating to, or regarding the Arroyo Gr
1. Any and all documents generated on or after August 19, 2015 referring to, relating to, or regarding the [Merced R
1. Any and all documents generated on or after August 19, 2015 referring to, relating to, or regarding the Arroyo Sa
Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, CoA Institute hereby requests access to
All reported necropsy reports for all Cetaceans from Sea World Enterprises Gold Coast, Queensland Australia (No
Oceana requests copies of all documents, records, and materials, including but not limited to all memoranda, studi
Please also see attached letter. Pursuant to the Freedom of Information Act ("FOIA"), as amended, 5 U.S.C. Sectio
This request generally concerns records related to the NMFS document entitled " Technical Guidance for Ass
I have another FOIA request as to which Dr. Zabel is probably the most knowledgeable custodian of documents. A
I request access to and copies of any and all documents pertaining to California Governor Jerry Brown's request (R
I ask to obtain a copy of the following, which I understand to be held by your agency. I believe these, at least in par
Please provide all records generated in connection with the deployment of US Navy dolphins to locate endangered
Marine Mammal Inventory (including any acquisitions, dispositions and notifications of transfer and/or transport) in
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 determina
YOUR ENTIRE FILE WITH ALL CONTENTS, including but not limited to any and all personnel records, employme
Through the FOIA, I request all records of Bottlenose dolphins, Pilot Whales, Orcas, Pacific Whitesided dolphins a
Any and all records concerning the effect of Executive Order 13771, entitled "Reducing Regulation and Controlling
On behalf of the Salinas Valley Water Coalition, this letter is a Freedom of Information Act ("FOIA") req
1) All records reflecting or relating to inter-agency analysis, discussion or correspondence regarding the boundaries
November 8, 2017: Based on phone conversation today, November 8, 2017,with requester, he acknowledge and c
REVISED DESC 11/1: -Final reports and official letters addressed to the Navy from NOAA -NMFSPacific Islands R
Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and a copy of the Nat
Emails (and attachments) that have been received by or sent by the following NOAA employees (over the course o
I am requesting the following: 1) Copy of Cathy Readinger's personnel file from October 27, 1982 to present in its e
With the foregoing as background, and pursuant to the FOIA, 5 U.S.C. § 552, CoA Institute hereby requests a
Copies of all emails pertaining to observer health and safety written or received by National Marine Fisheries Servi
A copy of the NMFS contract Arinex Pty Ltd. for the 8th International Fisheries Observer & Monitoring Confere
I am writing on behalf of Sea Shepherd Legal ("SSL") with a request for records maintained by the National Marine
Please produce records1 of the following types in the possession, custody, or control of the National Oceanic and A

REVISED DESC 10/23: Records of strandings in the National Stranding Database from 1997 to present in the mai
Endangered Species Act Section 7 Consultation Programmatic Biological Opinion of the US EPA's Issuance and Ir
I request a copy of all records (documents, emails, records of meetings and/or phone conversations, etc.) over the
Please find attached a FOIA request from the Natural Resources Defense Council (NRDC) for records regarding th
Note: all requests set forth below are for documents generated on or after January 1, 2009 through the date that N
The Center requests the following records from the U.S. Department of Commerce ("DOC") from April 1, 2017 to tl
All documents, including intra-agency discussions and communications with outside parties, related to (1) NOAA's
I hereby request all Marine Mammal Stranding Report forms (NOAA Form 89-864) that have been turned in to NMI
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, fil
On 28 June 2017, via email, the requester clarified the search scope of the request to: "I would like both foreign ob
REVISED SCOPE 6/20: For the time period of May 8, 2015 through May 8, 2017 all text messages, facsimiles and
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,
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 Fishe
I'd like to request financial information concerning the Western Pacific Regional Fishery Management Council (WP
I am writing with a request for records maintained by the National Marine Fisheries Service ("NMFS") regarding the
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, fil
We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, fil
We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, fil
Any and all records concerning implementation of Executive Order 13771, entitled "Reducing Regulation and Cont
Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and en
REVISED SCOPE: PART 1: You request the following information for the HI SSLL Fishery from 2014 to 2017 (Prio
Under the Freedom of Information Act I would like to request all documents and communications inter office (withir
December 18, 2017 Dear FOIA Officer: This is a request under the Freedom of Information Act. I hereby request th
I am requesting copies of all records related to any conversation or communication between Rhode Island Coastal
Expedited Review is sought pursuant to 15 CFR § 4.6(f) Re: Freedom of Information Act Request – Northeas
1. All weekly reports, charts, and transmittal e-mails that identify "high visibility" or otherwise "sensitive" FOIA reque
The hourly climate/weather data, including the temperature, wind chill temperature, and precipitation for the dates
[Reference FGI 17-54286] relevant to DOC50PAPT170003 we seek a copy of (a) contract with SOW/PWS (2) all r
To the National Oceanic and Atmospheric Administration - National Hurricane Center FOIA Officer: This is a reque
Daily water conditions for Corona del Mar for the week of June 26, 2016.
See attached letter to Tara Wallace, NOAA, Office of Coast Survey, 1315 East-West Hwy., #7350, Silver Springs,
"...all documents related to the National Marine Sanctuaries review as requested from Secretary Wilbur Ross
1. All information (including work plans, quality assurance plans, validated and unvalidated data, results, correspon
TIRN requests from the National Oceanic and Atmospheric Administration (NOAA), the Office of National Marine S
1. The most recent index for the administrative record of the Portland Harbor natural resource damage assessmer
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 co
Please provide all records generated in connection to complaints made to the Monterey Bay National Marine Sanct
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
Everything Related to Hurricane Katrina (2005). More specifically the landfall impact's felt as a result of the hurricar
UPDATED REQUEST 9/26 - I am interested in obtaining records describing Airfield Weather Sensors, and specific
All correspondence (from 2012 - present) between staff/scientists at the National Hurricane Center and Josh Morg
was interested in gaining access to the Ops1 webpage links. Specifically, I am interested in files discussing Airfield
1. A copy of any and all reports on the testing of the radiosonde autolauncher manufactured by the Vaisala Corpora
Copies of all reports submitted to the Secretary of Commerce pursuant to 15 U.S.C. §330a, concerning "weat
Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Friends of the Earth requests all records

1. Official record of panel notes and recommendations ofNOAA's 2016 Leadership Competencies Development Pr
UPDATED DESCRIPTION 10/26/16: All emails (and attachments) that have been received by or sent by the follow
Any email sent by David Fahey, NOAA Earth System Research Lab, from June 14, 2017, through June 27, 2017, t
This new FOIA Request seeks disclosure of as yet publicly disclosed documents substantiating the IQA conformar
Dear NOAA: I request copies of records under the Freedom of Information Act (5 U.S.C. 552) containing data that
NOAA Response Requested - After Michigan Tech's initial request to NOAA (Candice Jongsma - NOAA Federal)
All records mentioning, including and/or referencing timing for release of 4th National Climate Assessment, whethe
1. All records mentioning, including, and/or referencing the decision to terminate, or otherwise not renew, the Fede
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
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 upo
Under Title 5 of the United States Code Section 552 and the California Public Records Act, I hereby request an op
Per the Act, I am requesting copies of correspondence or memorandums dated from January 20, 2017 to the date
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 da
I request that a copy of the Notice of Violation and Assessment (NOVA). Case NE9803 IA. be provided to me. NOV
1. Official record from The Office of Special Counsel indicating that I was in violation of the Hatch Act in Aug 2016
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
NOAA Office of Marine and Aviation Operations (OMAO), Marine Operations Center (MOC) Customer Satisfaction
I request a complete and unredacted copy of any and all documents related to the NOAA Corps' decision to Separa
Request information regarding vessel equipment maintenance records for Rolls-Royce equipment. We are reques
Any emails or internal chat room messages (such as Slack) sent to or from NOAA public affairs officers Sus
I would like copies of all emails including the word CLIMATE or the word CHARTER or the phrase "ADVISOR
A copy of the Meeting Minutes for the Gulf Coast Interagency Environmental Restoration Working Group, during C
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 Se
A copy of each email that includes the word CLIMATE or the word CHARTER or the phrase "ADVISORY CO
A former NOAA employee, I am requesting records in response to a Social Security Administration (SSA) requirem
A true, complete and certified copy of your entire personnel/employment file of Thomas E. Taylor, III including but n

: progress reports they submitted detailing their progress in these grants. In particular, I'm interested in v
/W/PWS; and attachments, modifications
16 involving the Harvest BOA Pipeline System in Plaquemine Parish, Louisiana. Pursuant to the Freedo
page) and [2] Statement of Work/Performance Work Statement (SOW/PWS)
rvices (approximately 9 pages) by Kathy Clark, U.S. Dept. of Commerce- Boulder Labs; Acquisition Mar

7-0561. The investigation was handled by Kirk Essmyer. The focus of the OIG complaint was Jeff Rador
as Gov. Greg Abbott and former Texas Gov. Rick Perry to the National Weather Service from January 1,
ability, feasibility, accessibility, etc. of NOAA or related agencies buying weather data from a private part
ency communications to, or from, Dr. John Bates regarding the 2015 Karl et al study in Science magazi
NMFS decision memos. Can you please email them to me? · Bumphead parrotfish · Q
, Deputy Assistant Administrator for Regulatory Programs; (iii) Brian Pawlak, Director of the Office of Ma
e denial of the Pacific bluefin tuna listing petition under the Endangered Species Act, 16 U.S.C. §&
ports for SeaWorld San Diego, Marineland of Canada and Barcelona Zoo on pinniped historical transfer
ies observer in the Pacific Islands Regional Observer Program from 2006 through my last trip and subs
s including, but not limited to, access and moratorium permits for the f/v ALEX MARIE (Doc. Number 10
pertaining to any environmental review, assessment, consultation, or other procedures conducted the N
o all weekly editions of “Dock Buzz” from the first week of April 2017 to the present. * * * Please see the
Councils, and the National Oceanic and Atmospheric Administration (“NOAA”) Greater Atlantic Regional
ns and pinnipeds, Acquisitions - birth - cetaceans and pinnipeds
rande Creek flow rates, for five miles above and below the diversion to the Lopez Dam. 2. Any and all d
River] flow rates, for five miles above and below the Pilarcitos Dam. 2. Any and all documents generated
ausal Creek and/or the Walker Creek flow rates, for five miles above and below the Soulajule Dam. 2. A
o all issues of “Fathoms,” a NOAA-generated publication of the Greater Atlantic Regional Office, publish
w known As Sea WorldGold Coast) from 1971-2017
ies, reports, data, correspondence, comments, conversation records, meeting notes, files, electronic ma
on 552, and the Department of Commerce (“Department”) rules issued thereunder, 15 C.F.R. Part 4, I a
sessing the Effects of Anthropogenic Sound on Marine Mammal Hearing: Underwater Acoustic Thresho
s far as I know, someone at Montlake calculates “transportation-in-river ratios” or TIRs every year base
February 09, 2016 letter to Secretary of Commerce Penny Pritzker) that a federal fishery disaster be de
t, will likely be held by the Office of Law Enforcement within NOAA, as well as the Office of International
vaquita porpoises near the Gulf of California. For this request, the term “all records” refers to, but is not
the months of September 2017 and October 2017 for Dolphinaris Arizona, 9500 E Via de Ventura, Scot
t:4 1. All records or communications (including emails, text messages, and voicemails) referring or relati
tions on the proposal to list 66 coral species and to reclassify elkhorn and staghorn corals under the En
ent records, including employment application, letters of recommendation, health records, physical exam
nd any other cetaceans held by commercial permit to permanently hold captive by Marine World, Redw
Regulatory Costs” and associated guidance from the Office of Management and Budget (OMB Guidan
uest made pursuant to 5 U.S.C. §552, et. seq. National Marine Fisheries Services ("NMFS&q
s of the Corps' CWA § 404 jurisdiction in Puget Sound's tidally influenced waters. 2) All records re
confirm that his request included 2014 under DOC-NOAA-2016-000889 for citations, violations, fine and
egional Office, concerning the causes of death of pilot whales in the State of Hawaii for the period of Ja
tional Oceanic and Atmospheric Administration's law enforcement case file for Edward Schlief, who was
f 2016); 1. Melinda Marquis [Melinda.marquis@noaa.gov], 2. Kevin Kelleher [Kevin.Kelleher@noaa.gov
entirety, including documents that are retained in separate employee files; 2) Copy of Cathy Readinger’s
access to all communications—including, but not limited to, e-mail, instant messages, Google Hangouts
ce National Observer Program managers for the time period September 1, 2015 to September 14, 2016
ence in San Diego, California from August 29 to September 2, 2016, including attachments. Copies of al
Fisheries Service (“NMFS”) regarding the mass stranding (“Stranding”) of nearly 100 false killer whales
Atmospheric Administration (“NOAA”), that are, include, or reflect decisions, directions, or communicatio

n Hawaiian Islands. If there is a stranding event reported for a juvenile Humpback Whale on Maui in Feb
nplementation of Final Regulations under Section 316(b) of the Clean Water Act.
past year (since August 1, 2016), that discuss the following two issues: 1. Any proposed change, relaxa
ne Secretary of Commerce's decision determining that the state of New Jersey was in compliance with r
MFS responds to this request. 1. Any reports, memoranda, correspondence, or other documents (incluc
he date of this search: 1. All records mentioning, including, and/or referencing the draft and/or final biolo
June 23, 2016 announcement attached as Exhibit A, and (2) NOAA 's underlying decision to partially rei
FS since July 1, 2016. Further, I ask that these documents be sent to me in any digital formats in which
n 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
bservers (on US vessels) and US observers. For all observers I would like to know the regional observer
l emails (Including attachments) sent or received by: Will Ellis, NOAA OLE, Alaska Division Assistant Di
s 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
PRFMC). Specifically, I'm requesting: 1) Documents sufficient to show the amount of time spent by WP
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 prece
e mass stranding ("Stranding") of nearly 100 false killer whales at Hog Key, on Florida's southwestern co
o all communications —including, but not limited to, e-mail, instant messaging, Google hangouts or Goo
o all communications—including, but not limited to, e-mail,8 instant messaging, Google hangouts or Goo
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
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 pho
n NOAA) and intra office (between NOAA and external sources/entities) where the hawaiian monk seal
he following records: All records, including but not limited to, reports, memos and communications (elec
Resources Management Council (CRMC) and National Oceanic and Atmospheric Administration (NOA
t Canyons and Seamounts Marine National Monument and any other marine national monument record
ests. The time period for this item of the request is December 2015 to the present. 2. All memoranda, gu
of December 7, 2013 through December 12, 2013 from Richmond Executive Airport, Chesterfield Count
modifications (3) task orders with SOW (if any) and (4) winning proposal
est under the Freedom of Information Act. I request that a copy of the following documents be provided t

MD 20906; e-mail: tara.wallace@noaa.gov; ph: 240-847-8102 (incorporated by reference). Ms. Wallace
s by an executive order on April 28, 2017, including but not limited to emails, studies, reviews, and data.
ndence, reports and presentations) related to the "Avian Injury Study egg injection studies conducte
Sanctuaries ("ONMS"), the Flower Garden Banks National Marine Sanctuary (FGBNMS) and any other s
nt. 2. All external correspondence (including letters, emails, and memoranda) created or received betwe
SF), for copies of all internal and external communications concerning and regarding proposed wave or
ntain the "key words" Lake Michigan, Lake Michigan National Marine Sanctuary, Lake Michig
tuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is
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
ne. Also if there are any reports from the National Hurricane Center, please include those. These record
cally anything related to maintenance and field calibration methods conducted. I would only need the mo
erman, iCyclone, and any employees or representatives at AIR, RMS, AGROASEMEX, Swiss Re, Goldr
l Weather Sensing equipment. My employer, Physical Optics Corporation, has been working with the US
ation conducted by the National Weather Service. We understand that such testing has been conducted
ther modification" as defined by federal law 15 U.S.C. §330, from 1971 (the date this federal law wa
pertaining to any environmental review, assessment, consultation, or other procedures conducted the N

ogram (LCDP X) for Oceanic and Atmospheric Research (OAR); 2. Official record of employee recomm
ing NOAA employees since April of 2016 to the present: 1. Melinda Marquis [Melinda.Marquis@noaa.g
hat mentions or refers to the Climate Science Special Report (CSSR).
nce of NOAA and NOAA third-party contractor peer reviews of ten NOAA-developed climate assessmen
refers to and/or describes the dispersal of materials in the atmosphere visible over Monterey County, Ca
for a formal debrief on the declined CILER21, we were sent a link to file a request on this FOIA website
er it will be issued in final form by the statutory deadline, obstacles for completing by the deadline, and w
ral Advisory Committee Act charter for the “Advisory Committee for the Sustained National Climate Ass
that article: https://www.theverge.com/2017/8/7/16106810/dji-drone-banned-government-study-data-sa
e date listed on the request is July 25. We still have not received a formal debrief or any indication that th
OAR-CIPO-2017-2005127 - candice.jongsma@noaa.gov
on reviews of third-party (including NOAA) prepared scientific assessments.
portunity to inspect or obtain copies of the following records that pertain to the ship, USC&GSS Pio
of this request originating from the Office of the Administrator or the Office of Communications when it
A’s Annual Greenhouse Gas Index found here: http://www.noaa.gov/news/noaa-s-greenhouse-gas-index
ated from 1/1/2015 onward b) originate with, or are sent to or from personnel in the following offices: Co
VA Case NE98031A was issued on 14 June 2000 by Charles R. Juliand of the Gloucester. MA Office of
2. Official record of my ethical violation in having a NOAA logo on my personal website under coaching
ssion, custody or control that are referenced in Administration of Coral Reef Resources in the Northwest
any final guidance concerning the retention of instant messaging sessions created or received through
Surveys submitted by the scientific parties, and any attached comments or related notes on record, for
ate me for the Benefit of the Service. Because I am requesting documents about myself, I have enclose
sting a complete history of planned maintenance, corrective maintenance and repair records for the follo
an Buchanan, Maureen O’Leary, or John Leslie regarding the new Warner Brothers movie Geostorm
RY COMMITTEE". I limit this search to an electronic search of emails in the email accounts of the
alendar Years 2015, 2016 and 2017. NOAA serves as the Chair of this Interagency Working Group.
MMITTEE". I limit this search to an electronic search of emails in the email accounts of the Acting
cretary of Commerce for Oceans and Atmosphere) Ben Friedman, his senior advisor, special assistant,
MMITTEE". I limit this search to an electronic search of emails in the email accounts of the Acting
nent for documentation relevant to my appeal of the SSA’s initial benefits determination. Specifically, the
not limited to application for employment, performance evaluations, wage earnings, disability records, at

[redacted]

what they state they have done in regards to educational school programs administered by Kathy Brown.

m of Information Act, we request you provide us with a true and correct copy of the official records o f th

nagement Division I MC3; :325 Broadway, Boulder .CO 80305. The NOAA Contracting Officer was Mark

nski. The final response or findings was sent to OCAO.
, 2015 through the present: Sen. John Cornyn, Sen. Ted Cruz, Rep. Louie Gohmert, Rep. Ted Poe, Rep
y.
ne (see http://science.sciencemag.org/content/348/6242/1469) from July 30, 2014 to February 4, 2017. I
ueen Conch · Smooth hammerhead · Humphead wrasse · Reef manta ray &mi
nagement and Budget; (iv) Alan Risenhoover, Director of the Office of Sustainable Fisheries; or (v) Joh
sect; 1531-1544 ("ESA"). See Attachment A (12 Month Decision Not To List Pacific Bluefin Tuna).
s and status, including living and deceased animals, and origin of birth. I would like pinniped species to
equent decertification or ineligibility as an observer in this program: 1) All my sea time with dates of emb
27010). 3. Copies of all completed Applications for Vessel Replacement, Upgrade, and Confirmation of
lational Oceanic and Atmospheric Administration (NOAA) pursuant to the National Environmental Policy
attached PDF for a complete description of CoA Institute's FOIA request.
Fisheries Office, concerning the draft Industry-Funded Monitoring (IMF) Omnibus Amendment. Specific

ocuments generated on or after August 19, 2015 referring to, relating to, or regarding impacts on any sp
l on or after August 19, 2015 referring to, relating to, or regarding impacts on any species listed pursuan
ny and all documents generated on or after August 19, 2015 referring to, relating to, or regarding impact
ed between December 1, 2015 and the present. You may exclude from the scope of this request the Ap

il records, or other documents, which have been generated, received, kept, and/or considered by NMFS
m requesting the following records: (1) Any and all FOIA requests submitted in 2017 to the Department,
lds for Onset of Permanent and Temporary Threshold Shifts" ("Technical Guidance").
d on PIT-tag data for returning ESA-listed Snake River Chinook salmon and steelhead. We are looking f
lared following extended closure of West Coast Dungeness crab fisheries. This includes but is not limite
Affairs and Seafood Inspection within NOAA. -All documents related to U.S. fishing and processing lice
limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agen
tsdale, AZ, 85256. I'm also requesting any necropsy reports for animals that died in the care of Dolphina
ng to a NOAA Town Hall meeting held on or about September 15, 2015, in Providence, Rhode Island, a
dangered Species Act. • All documents and communications to and from all NMFS staff, including di
ination report, payroll records, questionnaire forms, correspondence, documents concerning backgroun
ood City; and Marine World/Africa USA, Redwood City; and Vallejo and Six Flags, Vallejo since its incep
ce) on: 1) the rulemaking entitled Designation of Critical Habitat for Threatened Indo-Pacific Reef-buildi
quot;) is requested to produce for inspection and copying any and all documents and records, including r
lecting or relating to intra-agency analysis, discussion or internal correspondence regarding the boundar
/or permit sanctions related to surf clam/ocean quahogs and that no responsive information was found f
n. 1, 2000, to the present. -Final reports and full documentation for necropsies performed on pilot whale
charged in Alaska in 2012 with selling seal-skin bowhunting tabs falsely marketed as Alaska Native-ma
], 3. Jennifer Mahoney [jennifer.mahoney@noaa.gov], that pertain to the following subjects; 1. The NEW
time and attendance records for the 24-month period preceding March 8, 2016; 3) Copy of Cathy Read
or Google Chat messages, text messages, SMS messages, Blackberry messages, Skype messages, M
(including attachments).
l NMFS correspondence (electronic and hard-copy) with Arinex Pty Ltd. regarding the conference, inclu
(Pseudorca crassidens) at Hog Key, on Florida's southwestern coast, on or about January 14, 2017. U
ns—internal or external to Commerce—concerning President Trump's Executive Order titled "Implemen

ɔruary 2008, please include photos and comments, necropsy results and other information. Do not inclu

ation, or elimination of existing marine species or habitat protections in federal waters off Alaska. Alaska
egard to management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries C
ling electronic mail messages) concerning any Endangered Species Act ("ESA") section 7 consultations
gical evaluation of chlorpyrifos under the Endangered Species Act, 16 U.S.C. §§ 1531-1544 ('
imburse the expenses of industry-funded at-sea monitoring.
they exist. Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in elect
Ocean under the Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1389 ("MMPA"), from Ja
ed 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 t
rector Nathan Lagerwey, OLE, Alaska Division, Deputy Special Agent in Charge to or from James W. B
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
RFMC staff on lobbying activities from 2014 to 2017. By lobbying activities, I am referring to any
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,
ast, on or about January 14, 2017. I respectfully request the following records from NMFS: 1. All records
gle chat messages, text messages, SMS messages, Blackberry messages, Skype messages, handwrit
ɔgle chat messages, text messages, SMS messages, Blackberry messages, Skype messages, handwri
ed by NMFS Southeast Regional Office relating to: 1. The data sources used to estimate the bycatch of s
ed by NMFS relating to: 1. The data sources used to estimate shark bycatch in the Gulf of Mexico reef fis
ed by NMFS relating to: 1. The data sources used to estimate shark bycatch in the HMS pelagic longline
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
otograph of injured or dead seabirds (up to 10 per year/species) · All photographs of each fish spe
R912-Nihoa-Sally is mentioned from June 28th 2016 until present.
tronic, physical and otherwise sent or received by representatives of this agency), regarding an investiga
A) regarding or related to federal preemption of any CRMC regulatory standards related but not limited t
s for the Atlantic Ocean. Supporting documents attached
uidelines, procedures, processing metrics, or communications concerning any type of "sensitive review,"
y, Virginia (KFCI).

o me: a list or log of all Freedom of Information Act requests received by the National Oceanic and Atmo

has informed us that she and her office are the proper NOAA division/employees to comply with this FO
A final report was submitted to the White House on October 25, 2017. I am asking for the final report, as
ed in 2006 and 2007 Hudson River PCBs Superfund Site Natural Resource Damages Trustees ("T
ubagencies or divisions under the supervision and administration of NOAA, all "records" as defined in th
en January 1, 2007, and June 1, 2009, to or from the Yakama Nation, or its designated representatives a
wind energy projects offshore California between January 1, 2010, to date. This request includes, but is
gan NMS, Wisconsin, or any combination of those words related to the creation of an National Marine Sa
limited to the time-frame between January 1, 2016 and the time this request is processed. For this reque
esources Management Act of 1978 and/or Louisiana's Coastal Resources Program. 2. Any and all reco
the native MATLAB files used in the publication, L. Jay Field et al., Re-visiting projections of PCBs in Lo
s are requested under the Freedom of Information Act
st recent publications (2016). ----------
nan Sachs, Munich Re, S&P (Standards & Poor's), Nephila, CSA, Securis, Leadenhall, Twelve
Air Force, Navy, and Marine Core weather departments to develop both remote and fixed weather sens
by the NWS at Sterling, Virginia and possibly at one or more locations in Alaska, and that the report ma
as enacted) to the present.
ational Oceanic and Atmospheric Administration (NOAA) pursuant to any environmental and wildlife pro

nendations to the OAR Assistant Administrator (AA), Craig N. McLean, in March 2016 from the 3 membe
ov] 2. Kevin Kelleher [Kevin.Kelleher@noaa.gov] 3. Jennifer Mahoney [Jennifer.Mahoney@noaa.gov] 4.

ts that NOAA knew or had reason to know the EPA Administrator would use as the scientific foundation,
alifornia on September 16, 2017, including but not limited to, the composition(s) of the materials dispers
system. We have placed 2 requests for a formal debrief on a proposal declination. First request on Jun
hether the recent decision to terminate the 'Advisory Committee for Sustained National Climate Assess
essment" (hereafter "Committee") including, but not limited to: a. Who participated in this decision-maki
afety I would like: 1) A copy of a report and all supporting documents. 2) Any email relating to the Verge
ne request has been reviewed. Our earlier request is below: Michigan Tech kindly requests a formal deb

neer (OSS-31). • Ship/captain's logs for the USC&GSS Pioneer (OSS-31). • Documents concernin
came to requests from members of the media. This information is being requested in light of recent rep
c-up-40-percent-since-1990 I would prefer to receive these in electronic format if possible.
mmunications Legislative and Intergovernmental Affairs c) include one or more of the following terms: &
the General Council. Enforcement and Litigation (GCEL). J also request a copy of the Notice of Permit
services versus "as seen at" section for where I have been a speaker 3. Official record of m
Hawaiian Islands, 24 O.L.C. 183, 184 & n.1 (2000). • Memorandum for Randolph Moss, Assistant
the "Google Chat" or "Google Hangouts" feature of the National Oceanic and Atmospheric Administrati
all NOAA Ship Nancy Foster cruises between the dates of 01 March 2012 and 28 February 2013. This i
d a Statement of Identity. At a minimum, I request that a copy of the following documents be provided t
wing Rolls-Royce equipment: Fishery Survey Vessel - FSV 6 NOAA Ship Reuben Lasker Shafting, Seal

Acting Administrator Ben Friedman, and those of his Senior Advisor, Special Assistant, Chief of Staff, D

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 th
Administrator Ben Friedman, and those of his Senior Advisor, Special Assistant, Chief of Staff, Deputy
SSA is requiring documents: 1) Showing that I am not (and have not been) receiving monthly pension b
tendance records, vacation and/or sick time taken, workers' compensation claims; copies of any and all

Several people have informed me that the HMMA claims to have been solely responsible for these prog

e United States Department of Commerce, National Oceanic and Atmospheric Administration, concerni

.E. Caban.

. Sam Johnson, Rep. John Ratcliffe, Rep. Jeb Hensarling, Rep. Joe Barton, Rep. John Culberson, Rep.

would like to receive the information in electronic form, preferably a searchable PDF or in XML format.
ddot; Bigeye thresher · Common thresher
n Bullard, Regional Administrator for the Greater Atlantic Region, and any person associated with the fol

be California sea lions and harbor seals.
arkation and disembarkation, number of sea days, and names of vessels; 2) All performance evaluation
History for the f/v ALEX MARIE (Doc. Number 102701 O).
Act, 42 U.S.C. § 4321 et seq., and/or the Endangered Species Act, 16 U.S.C. § 1531 et seq.,

cally, CoA Institute expressed concern over the lack of statutory authority for the Councils and NOAA to

ecies listed pursuant to the Federal Endangered Species Act (ESA) or the California Endangered Specie
t to the Federal Endangered Species Act (ESA) or the California Endangered Species Act (CESA) in the
s on any species listed pursuant to the Federal Endangered Species Act (ESA) or the California Endang
ril 1– 15, 2017 issue of Fathoms, which has been already disclosed in response to another FOIA reques

S and/or NOAA relating to OMB's review of the Final Rule with RIN 0648-BG45.
NOAA, NMFS, or any component thereof (including but not limited to the June 27, 2017 FOIA request s
1. Information not cited in the final version of the Technical Guidance or released to the public that NMF
or the most recent TIR calculations, specifically including an estimate based on adults returning from the
ed to communications, reports and records about the fishery disaster, both within the Department of Con
nses for Red Chamber Co., also known as Red Chamber or Red Chamber Group, a company based in
cy correspondence as well as correspondence with entities or individuals outside the federal governmen
aris Arizona during that period of time.
nd publicized on NOAA's website on or about September 3, 2015 (attached as Exhibit 1 to this FOIA req
visions beyond the Protected Resources division, concerning the petitioned, proposed, and listed corals
d investigations, telephone messages, notes, time lost from work due to any injury or illness, reason for
tion in the 1960's and through the name and location changes from Redwood City, California to present
ng Corals, including the timing and content of any such designation. 2) the rulemaking entitled Designat
neeting notes, memoranda, electronic mails, presentations, minutes, agendas, and any other writing rela
ies of the Corps' CWA § 404 jurisdiction in Puget Sound's tidally influenced waters. 3) Any records
or 2014. His request is now modified to only include the years of 2015 and 2016 of the information he is
s in the State of Hawaii by NOAA-NMFS-Pacific Islands Regional Office for the period of January 1, 200
ade. I would like to receive the information in electronic copies via email.
'S [National Energy with Weather Systems] project, 2. The future direction of the NEWS project, 3. Plans
inger's time and attendance records from March 8, 2016 through June 27, 2017; 4) Listing of administra
Microsoft Exchange Server messages, handwritten notes, or correspondence through any other medium

ding attachments.
nless otherwise stated below, and for purposes of this request, SSL seeks only those records produced
ting an America-First Offshore Energy Strategy" (April 28, 2017) ("Executive Order") (Exh. A) as it pertai

de photos, comments, necropsy results or other information for any other stranding events. ----------

federal marine protections subject to this request include, but are not limited to, the following: Aleutian I
ooperative Management Act. 1. Decision memoranda, letters, emails, situation summaries, discussion
(16 U.S.C. § 1536) that have been initiated or proposed, including Biological Opinions, Biological Asses
"ESA"); 2. All records mentioning, including, and/or referencing the draft and/or final biological evaluatio

ronic format, it must be released in that format upon request.
nuary 20, 2017 to the date of the search.
' and June 19, 2017. This includes documents, records, and materials regarding: 1. extension or reopen
he following documents: A summary of all complaints of violence, threats, or harassment against fisheri
Salsiger – NOAA, Alaska Regional Administrator Robert D. Mecum – NOAA, Alaska Deputy Regional Ad
or expansions during the specified time periods: Northeast Canyons and Seamounts Marine National M
present, excepting correspondence between the agency and PETA, the Animal Welfare Institute, and th
effort to influence legislation or executive action, including indirect or grassroots lobbying. 2) All WPRFM
ch person identified, documents sufficient to identify the individual's employment status, including but no
and a general ledger, in the greatest level of detail available without need for redaction. I would like this
s relating to the facts surrounding the Stranding, including how the event was discovered, the condition
ten notes, or communications through any other media—sent or received by the following individuals for
tten notes, or communications through any other media—sent or received by any and all NOAA employe
sharks in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Southeastern Atl
sh fishery (bottom longline and vertical line) and the Southeastern Atlantic snapper-grouper fishery (bott
and shark bottom longline fisheries. 2. Logbook data related to shark bycatch, by species, in the HMS s
ulatory Costs,'" or the April 5, 2017 Office of Management and Budget (OMB) guidance entitled, "Impler
under the Marine Mammal Protection Act ("MMPA") incidental to anthropogenic activities in Cook Inlet.
cies discarded dead (up to 10 per year/species) *(Prioritizing images of sea turtles and marine mamma

ation with case number PI1501648. According to a NOAA Public Affairs officer, this investigation was co
to application 2016-10-99, National Grid Fields Point Liquefaction Facility since October 2015

or handling of "high visibility" FOIA requests, including politically-sensitive requests or those submitted b

ospheric Administration's National Hurricane Center from Jan 1, 2005 until Sept. 21, 2017. As part of thi

OIA request.
s well as any documents that were involved in the production of that final report."
Trustees"), as well as all information generated by the Trustees as part of the 2008, 2009 and any
is request, including without limitation all inter and intra-agency communications and data, used, consul
and consultants (including Ridolfi Environmental), where the correspondence refers to Portland Harbor,
not exclusive of, any policy-development discussions for these types of energy projects, and/or discussi
anctuary in Lake Michigan. The period for the requested emails is January 1, 2017 through July 31, 201
est, the term "all records" refers to, but is not limited to, any and all complaints submitted to the Montere
rds, photographs, correspondence, documents, including email communication, related to every periodi
ower Hudson River fish using model emulation, Science of the Total Environment 557-558:489-501 (July

- I was interested in gaining access to the Ops1 webpage links. Specifically, I am interested in files disc
e, Stone Ridge, Schroders, Ren Re, Mercury, Third Point Re, AXA, Fermat, LGT, Aeolus, Elementum, C
sors. As a prior Air Force weather forecaster, I understand the benefit of staying up to date with current
ay be located in or maintained by Joe Pica, the Director of the NWS Office of Observations. 2. Documen

tection or conservation laws, including but not limited to, the National Environmental Policy Act, 42 U.S.

er panel through Carolyn McDonald, OAR Representative; 3. The employee names that OAR submitted
Stanley Benjamin [Stan.Benjamin@noaa.gov] That pertains to the following subjects: 1. The reasons

, in part, of the Clean Air Act endangerment analysis the EPA had been required to undertake in respons
ed and the quantities of each material dispersed. On information and observation, I have probable cause
20, 2017 - Tracking # DOC-NOAA-2017-001403. Our second request on August 9, 2017 - Tracking # D
ment' will impact the date for issuance of the final 4th National Climate Assessment.
ng process, both within and outside the agency and the U.S. Department of Commerce; b. What factors
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

g the presence or remediation (including abatement) of asbestoscontaining materials aboard or from the
orts surrounding concerns on relationships between other federal agencies and journalists, particularly th

quot;embargo" "embargoed until" "press conference" "press briefing&
Sanction (NOPS) associated with the NOVA for Case NE9803 I A .
ethical violation in sending sensitive information about a pending investigation to those that needed to k
Attorney General, Office of Legal Counsel, from John Leshy, Solicitor, Department of the Interior, James
on's ("NOAA") Unified Messaging System (i.e., NOAA's Google-hosted agency e-mail platform). Accordi
ncludes, but is not limited to, the following cruises: NF-12-02, NF-12-03, NF-12-04, NF-12-05, NF-12-06
me: 1. The "complete record of the proceedings, including the exhibits," all findings and rec
s, and Bearings Fixed Pitch Propeller Steering Gear (Model SR662) Moving Vessel Profiler Survey Syste

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 c
Chief of Staff and Policy Director. I limit this search to the dates July 1, 2017 to the present.
benefits associated with my work for NOAA; and 2) Providing proof of the amount of any lump sum paym
doctor's reports, doctors notes concerning medical/physical limitations; and reports of physical examina

grams during a time period that the Monk Seal Foundation was paying for the programs to operate unde

ng the Cheniere Ronquille Barrier Island Coastal Restoration Project FED NO. BA-76 and the pipeline s

. Kevin Brady, Rep. Michael McCaul, Rep. Michael Conaway, Rep. Kay Granger, Rep. Mac Thornberry,

llowing entities concerning industry funding for the Northeast Multispecies Fishery's At-Sea Monitor Prog

ıs made by NMFS and/or Techsea International, Inc. staff after each trip; 3) The original complaint from

with regard to NOAA's recent request for proposals as part of its regional aquaculture pilot project.

compel regulated parties to pay for supplemental at-sea monitoring services. Pursuant to the Freedom c

es Act (CESA) in the Arroyo Grande Creek. 3. Any and all documents generated on or after August 19, 2
e Pilarcitos Creek. 3. Any and all documents generated on or after August 19, 2015 referring to, relating
gered Species Act (CESA) in the Arroyo Sausal Creek and/or the Walker Creek. 3. Any and all documer
st. Please see the attached PDF for a complete description of CoA Institute's FOIA request.

submitted by the Center for Biological Diversity with the FOIA request record DOC-NOAA-2017-001431)
S relied upon in the Technical Guidance, including scientific documents, studies, and reports. 2. Technic
e juvenile class outmigrating in 2015. Presumably there is a paper somewhere, or draft paper out for rev
nmerce and between the DOC and external agencies.
Vernon, California and registered to the following address: 1912 E Vernon Ave., Vernon, California, 900
t), emails, letters, notes, telephone records, telephone notes, minutes, memoranda, comments, files, pr

uest), including · but not limited to all written comments, as well as all communications with non
See attached for full request and fee waiver request.
termination of employment, AND ANY AND ALL RECORDS WHATSOEVER YOU MAY HA VE regardi
day in Vallejo, California. As well as cetaceans held at the facilities, please included the further transpor
tion of Critical Habitat for the Arctic Ringed Seal, including the timing and content of any such designatio
ated to or associated with the meetings and telephone conferences with the Monterey County Water Re
reflecting Army Corps' directives, guidance, rules, or other authorities regarding the appropriate tidal lim
seeking for. _____END_____ 1. All documents that constitute, relate to or quantify dockside
0, to the present. This includes supporting materials such as lab reports, Level A data, photographs, res

s of the NEWS project after October 1, 2016, 4. CIRES employee Christopher T M Clack, 5. Budget info
ıtive hours provided to Council staff from March 8, 2016 through June 27, 2017; 5) Confirmation from th
—sent or received by all NOAA employees and members of the Gulf of Mexico Fishery Management C

or received by NMFS since May 25, 2017. SSL selected this date on the basis of representations by NM
ns to "Incidental Take Authorization requests, including Incidental Harassment Authorizations and Letter

---------- Records of all cetacean stranding events in the main Ha

slands Coral Habitat Protection Areas; Aleutian Islands Habitat Conservation Area; Bowers Ridge Habit
documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational se
sments, or informal consultations, pertaining to the implementation of the National Flood Insurance Pro
n of malathion under the ESA; 3. All records mentioning, including, and/or referencing the draft and/or fi

ing of the private recreational red snapper season; 2. how or whether this action would affect progress t
es observers in US fisheries observer programs that occurred in calendar year 2013, 2014, 2015, and 2
ministrator Glenn G. Merrill – NOAA, Alaska Region Sustainable Fisheries Fish and Wildlife Administrat
onument (01/01/14 – 12/31/16) Papahanaumokuakea Marine National Monument Expansion (01/01/14
eir representatives. This request includes, but is not limited to, memoranda, reports, notes, letters, emai
IC 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-deli
of the animals, any efforts made to assist the animals, and mortality data. 2. All records relating to any in
the time period of April 17, 2017 through April 24, 2017: □ John F. Quinn □ E.F. "Terry" Stockwell III □
ees who attended the April 18–20, 2017 NEFMC meetings in their official capacity. The time period for t
antic snapper-grouper fishery (bottom longline and vertical line). 2. Logbook data regarding the bycatch
om longline and vertical line) in the First Edition of the U.S. National Bycatch Report and the First and S
shark bottom longline and pelagic longline fisheries. 3. Observer data and reports related to shark bycat
menting Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs.'" This re
Please provide the following documents in your possession, whether received, created, and/or distribute
ls for the HI SSLL) Data collected by the NMFS-Pacific Islands Regional Observer Program for all spe

nducted by NOAA's Office of Law Enforcement and forwarded to NOAA's Office of General Counsel, E

y news-media requesters. The scope of this item includes records defining or describing "high visibility"

s request, I would like to obtain the names of the persons or entities seeking information from the Natio

post-2009 avian egg injection work. 2. All information (including work plans, quality assurance plans, va
ted, referenced or relied upon to prepare the following: (1) that certain "Environmental Assessment for A
the Lower Columbia River, the Multnomah Channel, or the Willamette River. For the Lower Columbia R
ons of the fiscal implications to the national marine sanctuary program, or to individual sanctuary sites, a
7.
y Bay National Marine Sanctuary (via email, mail, fax, and phone) about wildlife being harassed or distu
c evaluation by the National Oceanic and Atmospheric Administration of Louisiana's State and Local Co
2016), and as time permits, John Kern and Jay Field will organize and provide computer code to read t

ussing Airfield Weather Sensing equipment. My employer, Physical Optics Corporation, has been workin
atco, AlphaCat, Kinesis, Blue Capital, Pillar, AQR, and/ or Kiskadee. Also all preliminary drafts of Tropica
publications, as well as in touch with the NWS/NOAA departments. Would I be able to gain access to p
ts that reveal the cost of the Vaisala radiosonde autolaunchers procured by the National Weather Servi

C. § 4321 et seq., and/or the Endangered Species Act, 16 U.S.C. § 1531 et seq., with regard

to NOAA Leadership in March 2016; 4. Emails between Craig McLean and Gary Matlock on the LCDP i
s behind the cancellation of the NEWS (National Energy with Weather System) project 2. The decisio

se to the U.S. Supreme Court's decision in Massachusetts v. EPA, and of the positive 2009 Clean Air Ac
e to suspect that the materials dispersed include at least Welsbach and Welsbach-like materials (such a
OC-NOAA-2017-001680. To date we have not received a formal debrief or any indication that the first o

were considered in making this decision; and c. How the Committee's unfinished work will now be comp
Any email communication between NOAA, the Dept of Commerce and DJI concerning the article 5) Any
dice.jongsma@noaa.gov

e USC&GSS Pioneer (OSS-31). • Documents concerning the repair, overhaul or maintenance of th
ne CDC, especially agencies with a science focus.

quot; "press call" "press event" "press strategy" "presser"

know (ie management officials and the Office of General Counsel representative).
s Dorskind, General Counsel, National Oceanic and Atmospheric Administration, and Dinah Bear, Gene
ing to a March 2012 handbook, "[p]er the decision of NOAA General Counsel," communications through
, and NF-12-07.
ommendations, and the "Board's recommendation" provided to Rear Admiral Michael J. Sila
em Oscar Dyson Class Fishery Research Vessels Shafting, Seals, and Bearings Fixed Pitch Propeller S

opy of each email that includes the phrase "CLIMATE ASSESSMENT" or the phrase "ADVISORY COM

ent received and the effective date of such payment. The Social Security Administration requires that su
tions.

r a grant from Schofield Barracks Wives Club. PLEASE NOTE, I do not know if HMMA has actually mac

pill which occur red on 5 September 2 01 6 . This request includes, but is not limited to, any contracts be

Rep. Randy Weber, Rep. Bill Flores, Rep. Jodey Arrington, Rep. Lamar Smith, Rep. Pete Olson, Rep. V

gram or the draft Industry-Funded Monitoring Omnibus Amendment ("Omnibus Amendment")2: a. NOA

Morgan Lynne Miller filed with NMFS detailing my alleged offenses; 4) Any communications between NI

of Information Act ("FOIA"), 5 U.S.C. § 552, CoA Institute hereby requests access to the following:

2015 referring to, relating to, or regarding any efforts to mitigate any impact of the Lopez Dam or water d
to, or regarding any efforts to mitigate any impact of the Pilarcitos Dam, on any species. 4. Any and all d
nts generated on or after August 19, 2015 referring to, relating to, or regarding any efforts to mitigate any

requesting any records relating to draft and/or final biological evaluations of malathion under the Endan
cal tools and modeling scenarios not released to the public that NMFS relied upon when making change
view.

58. I ask that you search based on address, because there are many subsidiaries related to this conglo
esentations, consultations, biological opinions, assessments, evaluations, schedules, telephone logs, pa

governmental organizations referring or relating to the September 15, 2015, NOAA Town Hall meeting.

ng: MELISSA SOLDEVILLA.
tation and dispensation of all animals who were moved from Marine World et al. Including all birth and c
n. 3) the critical habitat designation for main Hawaiian Islands insular false killer whales, including the t
sources Agency that occurred on or around the following dates: January- February 2014; April 1, 2014;
nit of Army Corps' CW A § 404 jurisdiction. 4) Any records relating to specific projects, of which the
inspections under the authority of NOAA or NMFS of surfclam and ocean quahog landings for each of th
ponse reports, and emails with necropsy initial findings that have been provided to NOAANMFS- Pacific

rmation on the Wind Boundary Layer [WBL] or Atmospheric Science for Renewable Energy [ASRE] anc
e Council's contracted Information Technology Company regarding the date of termination of service fro
ouncil ("Gulf Council") who attended the Gulf Council's August 2017 meeting. The time period for this re

MFS that it considered May 25 as the "cutoff" date for its record search related to SSL's May 11, 2017 rec
s of Authorization" for seismic surveys. See Exh. A § 9. This includes but is not limited to records that ar

waiian Islands - Kauai, including Niihau, Oahu, Maui, Molokai, Lanai, and Hawaii Island (Big Island) from

at Conservation Zone; Alaska Seamount Habitat Protection Areas; Bering Sea Habitat Conservation Are
eason; 2. Communications pertaining to New Jersey's recreational management of summer flounder du
gram ("NFIP") by the Federal Emergency Management Agency ("FEMA") at the California statewide leve
nal biological evaluation of diazinon under ESA; 4. All records mentioning, including, and/or referencing t

oward rebuilding under the red snapper rebuilding plan; 3. how or whether this action may cause or con
016, separated by: 1. Year; 2. Whether the complaint was initiated by the observer or by observer progra
or Bill Tweit – Washington Department of Fish and Wildlife Doug Vincent-Lang – Washington Departmer
– 12/31/16) Pacific Remote Islands Marine National Monument Expansion (01/01/12 – 12/31/14) Mariar
ls, and other correspondence.
r the 10 years preceding a response to this request. 3) All requests from federal or state legislators for V
ual serves as full- or part-time staff. 3) For each staff member identified, documents sufficient to show a
mited format, please let me know available formats. 2) Documents sufficient to identify and describe coc
vestigation, whether conducted by NMFS or other entities, of the possible cause of the Stranding. This r
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
econd Updates to the National Bycatch Report. 2. Logbook data used to estimate shark bycatch, by spec
ch, by species, in the HMS shark bottom longline and pelagic longline fisheries. 4. The total number of p
quest includes both records related to implementation generally and records related to the effect of impl
ed by NOAA: (1) All documents regarding the status of any pending anthropogenic activities in the Cook
cies, including protected species in an aggregated format organized by the following headings: Species r

nforcement Section on March 7, 2017, for consideration of prosecution. The Enforcement Section declin

requests or pertaining to the justification and/or genesis of the weekly reports sought in Item One. The t

nal Hurricane Center via the FOIA process, as well as their affiliations; a description of their requests; the

idated and unvalidated data, results, correspondence, reports and presentations) related to the Trustees
uthorization of U.S. Army Corps of Engineers permit SWG-2015-00068 to Texas Parks and Wildlife Dep
iver, this request is limited to external correspondence that refers or pertains to environmental contamin
and discussions about the Chumash National Marine Sanctuary nomination as it might relate to future wa

bed by drones or unmanned aerial vehicles, documents, correspondence (including, but not limited to, i
astal Resources Management Act of 1978 and/or Louisiana's Coastal Resources Program. 3. Any and a
he data files and produce relevant inputs/assumptions/information for as many figures as possible withir

g with the US Air Force, Navy, and Marine Core weather departments to develop both remote and fixed
al Cyclone Reports for hurricanes Odille and Patricia. "We are interested in the influence two reports fro
rticular Ops1 Publications? I have submitted a request, but I am not sure if I would qualify.
ce; estimated cost of installation per unit; and estimated cost of maintenance and operation per unit.

to NOAA's recent announcement of the National Sea Grant College Program 2018 Ocean, Coastal and

n March 2016; 5. Emails between Craig McLean and NOAA Leadership on the LCDP in March 2016; 6.
n making process of the cancellation of NEWS 3. The NEWS (national energy with weather system) li

ct GHG Endangerment Findings EPA had ultimately reached.
as the oxides of metals), coal ash, and materials characterized by frequency-dependent emissivity. In my
r second request has been reviewed. Our earlier request is below: Michigan Tech kindly requests a forn

pleted, including: i. NOAA's formal request for the Committee to prepare, by the Spring of 2018, a set of
between NASA and the Verge reporter. 6) Any documents relating to Ed Dumas' investigation of his pe

e USC&GSS Pioneer (OSS- 31). • Photographs of the interior of the USC&GSS Pioneer (OS

"media event" "media call" "media briefing" "media strategy&qu

ral Counsel, Council on Environmental Quality, Re: Request for Opinion Regarding Administration of Co
Google Chat (or Google Hangouts) "will be considered 'off the record' and will not be recorded in anywa

h, NOAA, Director, NOAA Corps. This is the same record reviewed by RADM Silah as stated in his encl
Steering Gear (Model SR662) Moving Vessel Profiler Survey System

MITTEE". I limit this search to an electronic search of emails in the email accounts of the Acting Adminis

uch proof "be the original or a certified copy from your previous employer . . .showing the pension amour

de these claims or not so I would like to see the reports to verify the veracity of what I have been told.

etween the Government and the primary contractor, Great Lakes Dredge & Dock Company, with all

Vill Hurd, Rep. Kenny Marchant, Rep. Roger Williams, Rep. Michael Burgess, Rep. Blake Farenthold, R

A Office of General Counsel; b. NOAA Office of Legislative and Intergovernmental Affairs; c. Departmen

MFS and the observer providers pertaining to my performance; 5) Written documentation of NOAA's rea

All records concerning the aforementioned April 2017 comment, including any correspondence between

liversions of or to the Lopez Dam, on any species. 4. Any and all documents generated on or after Augu
locuments generated on or after August 19, 2015 referring to, relating to, or regarding water usage or wa
/ impact of the Soulajule Dam, on any species. 4. Any and all documents generated on or after August 1

gered Species Act ("ESA"); (2) Any and all FOIA requests submitted in 2017 to the Department, NOAA,
s to previous drafts of the Technical guidance that will provide the public with a better understanding of

merate. I also ask that you search based on these known subsidiaries specifically, though my request is
apers published and/or unpublished, reports, studies, photographs and other images, data (including raw

2. All records or communications (including emails and voicemails) referring or relating to a "publi

leath records, the histories of all births preceeding from the Marine World facilities in either Redwood Ci
timing and content of any such designation.
April 7, 2014; May 22, 2014 May 27-May 30, 2015; July 6, 2015; and July 23, 2015.
agencies are aware, which were not subject to Army Corps' § 404 jurisdiction because dredge or fi
ne years 2014 through and including 2016. 2. All documents that constitute or quantify all citations issuec
Islands Regional Office by contractors or outside researchers. -Official letters and official memoranda f

l where the funds from the NEWS project were allocated. The documents include any correspondence b
m their inventory for the MacBrook Pro laptop identified as "Infinity Number 6085" and the last date the
quest is August 6–12, 2017.9

quest (DOC-NOAA-2017-001198) seeking similar records concerning the Stranding. Consistent with SSI
e or reflect: NOAA's evaluation of applications for incidental harassment authorizations (IHAs) for seis

n 1997 to date. Please amend my request to apply to whales ONLY.

ea; Nunivak Island, Etolin Strait, Kuskokwim Bay Habitat Conservation Area; Walrus Islands federal clos
ring the 2017 season, including communications within the Department or any of its subdivisions, and co
el or relating to any of the following California counties and/or towns/cities/unincorporated territories there
the draft and/or final biological opinion of chlorpyrifos under the ESA; 5. All records mentioning, including

tribute to overfishing; and 4. data, computations, or any other analysis used to determine the number of
am staff; 3. Date of complaint; 4. Observer program from which the observer was deployed; 5. Nature of
nt of Fish and Wildlife Chris Anderson – North Pacific Fisheries Management Council Chris Oliver - Nortl
nas Trench Marine National Monument (01/01/2007 – 12/31/2009) Rose Atoll Marine National Monumen

WPRFMC to provide testimony, commentary, or technical or factual presentations about WPRFMC activ
ll expenditures or disbursements, including but not limited to salaries, travel expenses, per diem payme
des used in the WPRFMC formal books of accounts, including but not limited to the organization, fund, p
request includes, but is not limited to, records regarding analysis of tissue samples reportedly taken by N
y □ Mark Gibson □ Eric Reid □ Rick Bellavance □ David E. Pierce □ Michael Sissenwine □ Elizabeth E
ed to: □ John Bullard □ Michael Pentony □ Elizabeth Chilton □ Amy Martins □ J. Michael Lanning □ Jo
outheastern Atlantic snapper-grouper fishery (bottom longline and vertical line). 3. Observer data regardi
cies, in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Southeastern Atlan
ermitted vessels in the Gulf of Mexico reef fish fishery and Southeastern Atlantic snapper-grouper fisher
ementation on any specific rule. This request also includes any and all communications between the Na
Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas; (2) All documen
name, trip type, and disposition of animal that includes the below information, organized annually, by cal

ed prosecution on December 8, 2017. I do not expect any exemptions to apply to my request as the cas

ime period for this item of the request is January 2010 to the present. 3. All communications (including c

e dates when NHC received the requests; and if the requests have, to date, been satisfied.

s' 2015 Hudson River Catbird Egg Investigation. 3. All information (including work plans, quality assuran
partment and Bureau of Safety and Environmental Enforcement Approval of Platform Decommissioning
ation, pollution, injuries to fish and / or fisheries, natural resource damages, or CERCLA. 3. All agreeme
ave or wind energy projects. As an elaboration ofthis request, we seek any communications and/or mate

nter and/or intra-agency correspondence as well as correspondence with entities or individuals outside t
all records, photographs, correspondence, documents, including email communication, related to any &c
n the $18,212 budget. ---------- W

weather sensors. As a prior Air Force weather forecaster, I understand the benefit of staying up to date
m the National Hurricane Center had on a catastrophe bond issued by the World Bank and the governm

Great Lakes National Aquaculture Initiative.

Official record of all employees selected for the LCDP X Cohort in March 2016; 7. Email from Katy Stev
icensing 4. The actors who made the decision to cancel NEWS 5. Any correspondence between th

/ considered opinion, a search of your electronic files using the names of these materials as search term
nal debrief on the CILER21 proposal that was not selected for funding. NOAA-OAR-CIPO-2017-200512

"Recommendations on a Sustained National Climate Assessment," as detailed in Attachment A (Advisc
ersonal DJI UAV The timespan should extend before and after the article was written. The records are re

S-31). • Photographs of the exterior of the USC&GSS Pioneer (OSS-31). Documents identifying the

ot; "media policy" "background briefing" "special briefing" "daily

ral Reef Resources in the Northwest Hawaiian Islands (June 30, 2000). • Letter for Randolph Moss, Ass
ay."2 Records concerning the Office of General Counsel's ("OGC") "decision," in this respect, are respor

osed memorandum from September 22, 2017, "Show Cause Results - Separation in the Best Inte

trator Ben Friedman, and those of his Senior Advisor, Special Assistant, Chief of Staff, Deputy Chief of S

nt and effective date."

[redacted]

attachments , exhibits and amendments to the contract, project specifications , general conditions and

ep. John Carter, Rep. Pete Session, Rep. Brian Babin and former Rep. Randy Neugebauer. For email c

t of Commerce Office of General Counsel; d. Department of Commerce Office of the White House Liais

ısoning for placing a hold on my data; 6) Any communication between NMFS and anyone where my nam

or amongst members of the New England and Mid-Atlantic Councils; officials, employees, or representa

st 19, 2015 referring to, relating to, or regarding water usage or water diversions on the Arroyo Grande C
ater diversions on the Pilarcitos Creek related to the Pilarcitos Dam. 5. Any and all documents generated
9, 2015 referring to, relating to, or regarding water usage or water diversions on the Arroyo Sausal Cree

NMFS or any component thereof (including but not limited to the June 27, 2017 FOIA request submitted
the justification for the changes and allow the public to adequately assess them. 3. Information regarding

not limited to these subsidaries: Stanford Cold Storage Inc., Orient Fisheries, North Lake Fisheries, H L
/ data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final f

c event" held by the Conservation Law Foundation, Natural Resources Defense Council, National

ty or Vallejo up to their current destinations or to death certificate information. Dates and records includi

ll material was placed above MHHW, but for which dredge or fill material was, or was potentially, placed
d by NOAA or NMFS for violations of surfclam or ocean quahog regulations for each of the years 2014 th
rom NOAA-NMFS-Pacific Islands Regional Office, notifying the Navy of incidents or necropsy results of

between the three staff members from NOAA enumerated above and CIRES administration members, fo
machine was remotely accessed; 6) Copy of all relative invoices and checks that were issued after 8:00

L's mission and pursuant to 15 C.F.R. Part 4 and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 55
smic airgun surveys in the Mid- and South Atlantic Planning Areas; and communications with applicants

ures; Gulf of Alaska Slope Habitat Conservation Area; Crab, halibut, herring, and salmon “savings areas
ommunications between Department staff (or staff of any Department subdivision) and any outside entity
ein: Humboldt, Santa Cruz, Monterey, Ventura, Santa Barbara, San Luis Obispo, San Mateo, Marin, and
g, and/or referencing the draft and/or final biological opinion of malathion under the ESA; and 6. All recor

days the season would be open. We request documents, records, and materials pertaining to the above
the complaint (e.g. assault, sexual assault, harassment, verbal abuse, intimidation, interference, lack of
n Pacific Fisheries Management Council Dave Witherall - North Pacific Fisheries Management Council
t (01/01/2007 – 12/31/2009) This should include, but not be limited to, scientific studies, scientific data, a

vities for the 10 years preceding a response to this request. 4) Any notices from WPRFMC to NOAA Reg
nts, bonuses, and reimbursed expenses, made by WPRFMC to that person over the 2 years preceding
program, project-task, and object class codes. 3) Any handbook, manual, policies, or guidance used by c
NMFS scientists from some of the dead animals. 3. All records regarding any marine oil and gas activitie
trie John Pappalardo Douglas Grout Peter T. Kendall Mark Godfory Thomas A. Nies Chris
n 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 s
tional Marine Fisheries Service and OMB (including the Office of Information and Regulatory Affairs) rela
ts regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all docume
endar and haul dates: 1)Species name 2)Total caught—by number of animals 3)Total kept (retained)—

e is now closed. In the event of any exemptions in my request, please detail the use of any exemptions

case summaries, memoranda, guidelines, or procedures) concerning the tracking of “transition cases,” i

ce plans, validated and unvalidated data, results, correspondence, reports and presentations) not alread
and Site Clearance Verification Plan (2012-217A) to W&T Offshore Inc. for the creation of an artificial re
nts (including contracts, settlements, memoranda of understanding, memoranda of agreement, adminis
erial such as emails, letters, meeting minutes, reports, research analysis, and summaries of telephone a

he federal government), emails, letters, notes, telephone records, telephone notes, minutes, memorand
quot;program change" as set forth in 15 C.F .R. § 923 .1 through § 923 .13 5 to the Louis
We request the following agency records relative to the Hudson River PCBs Superfund Site (NYD980763

with current publications, as well as in touch with the NWS/NOAA departments. Would I be able to gain
ment of Mexico. Initial readings from the NHC would have triggered the bonds - meaning the government

vart to OAR Leadership regarding the OAR EEO/Diversity Advisory Committee in October 2016 that rais
ıe three staff members from NOAA enumerated above, but of particular interest are to/from specific sou

ıs will likely result in records responsive to my request. On further information and observation, I have pı
7 - candice.jongsma@noaa.gov

ıry Committee for the Sustained National 1 Climate Assessment); and ii. The Committee's other work in
equested under the Freedom of Information Act.

e commanding officer, officers, sailors and those aboard the USC&GSS Pioneer (OSS-31) during t

briefing" "close hold" "on the record" "on background" "off

sistant Attorney General, Office of Legal Counsel, from James Dorskind, General Counsel, NOAA (July
ısive to CoA Institute's request, as are other records reflecting agency-wide guidance on the retention of

rest of the NOAA Corps." 2. The complete record of the proceedings, including the exhibits and all

Staff and Policy Director. I limit this search to the dates July 1, 2017 to the present. I would like to receive

scope of work , maps, plats, engineering drawings or surveys, environment assessments, plans and des

orrespondence, this refers to all communications sent to any noaa.gov or any other email addresses aff

on; e. New England Fishery Management Council; or f. Mid-Atlantic Fishery Management Council. The t

ne is mentioned; 7) Any statements before and after September 12, 2017 alleging any misconduct by me

atives of NOAA; or any other third party. The time period for this request is April 11, 2017 to the present.

Creek related to the Lopez Dam. 5. Any and all documents generated on or after August 19, 2015 referri
d on or after August 19, 2015 referring to, relating to, or regarding water quality in the Pilarcitos Creek, in
k and/or the Walker Creek related to the Soulajule Dam. 5. Any and all documents generated on or afte

d by the Center for Biological Diversity with the FOIA request record DOC-NOAA-2017-001431) requesti
g (a) NMFS' plans for peer-review of the changes found in the most recent version of the Technical Guid

. Foodservice, MPI Fisheries Inc., International Gourmet Fisheries Inc., TB Fish Imports Inc., KB Partner
orm. This request is not meant to exclude any other records that, although not specially requested, are r

Geographic Society, and Pew Charitable Trusts at the New England Aquarium on or about September 2

ng: of all births, deaths, pregnancies, transfers, and complete histories are requested. This record will in

lower than HAT.
rough 2016. 3. All documents that constitute or quantify permit sanctions resulting from violations of fed
pilot whales and responses from the Navy to NOAA-NMFS-Pacific Islands Regional Office regarding tho

or example, 1. Kristen Averyt [kristen.averyt@colorado.edu], 2. Waleed Abdalati [waleed.abdalati@color
a.m. March 8, 2016 that bore Cathy Readinger's signature; 7) Written confirmation from employee Beth

52, I respectfully request the following records from NMFS: 1. All records relating to the facts surrounding
seeking IHAs for seismic surveys, and/or with any other industry group regarding the Executive Order as

s"; Any/all marine mammal conservation measures, including Steller sea lion critical habitat, North Pacifi
r; 3. Proposals, recommendations, or factual information submitted to the Department or any of its subdi
Sonoma Counties. 2. Any reports, memoranda, correspondence, or other documents (including electro
ds mentioning, including, and/or referencing the draft and/or final biological opinion of diazinon under ES

enumerated subjects involving, but not limited to, the following people: 1. Wilbur Ross 2. Samuel Rauc
f assistance, death, or other type of threat); 6. What, if any, outcomes stemmed from each complaint (e.
Jim Armstrong - North Pacific Fisheries Management Council Sam Cunningham - North Pacific Fisheries
agency studies, agency management plans, maps, photos, references, testimony, public comments, Co

gional Counsel regarding contact with federal or state legislators or testimony before legislative committe
a response to this request. 4) Documents sufficient to identify the name of each WPRFMC Council mem
or used to train accounting staff that concerns entering data into the WPRFMC formal books of accounts
s, including both exploratory activities and active production, near the site of the Stranding from January
stopher 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
catch Report and the First and Second Updates to the National Bycatch Report. 3. Observer data used t
napper-grouper permit in the Gulf of Mexico and Southeastern Atlantic. 6. The number of vessels that ha
ated to or concerning Executive Order 13771, the Interim Guidance, or the Guidance.
ents supporting a "negligible" impact finding pursuant to the MMPA; (3) All documents, including researc
-by number of animals 4)Total discarded—by number of animals 5)Total discarded alive—by number of a

including references. If any of the above records cannot be provided due to an exemption or other reaso

.e., FOIA requests pertaining to the incoming Trump Administration. The scope of this item includes rec

dy publicly available related to the Trustees' 2004 Avian Investigation Study Plan for the Hudson River (in
ef through the abandonment of a partially removed gas platform in the Outer Continental Shelf Block Hig
trative orders on consent, or consent decrees) dated on or after December 1, 2000, involving the Yakan
nd direct conversations between officials of the National Ocean Service, Office of National Marine Sanc

la, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedu
siana State and Local Coastal Resources Management Act of 1978 and/or Louisiana's Coastal Resource
841): Technical Presentations: 1 a) Relative to the May 19, 2015, NOAA Power Point® Presentation title

access to particular Ops1 Publications? I have submitted a request, but I am not sure if I would qualify.
of Mexico would have received a payout to cover the damage and destruction caused by the storms. H

ed issues about Nicole S. Mason, EEO/Diversity Program Manager, specifically the violation of the Com
rces, Craig McLean [craig.mclean@noaa.gov], 2. Gary Matlock CEO [gary.c.matlock@noaa.gov] 6. C

robable cause to suspect that at least some of the materials dispersed in the atmosphere are dispersed

support of the preparation of the final Fourth National Climate Assessment, pursuant to 15 U.S.C. &sec

he relevant time period of 1956-1958. • Ship/captain's logs for the USS Mobjack (AGP-7), the predeces

the record" "deep background" "for attribution" "not for attribution&qu

24, 2000).
f chat/instant or text messages created or received through NOAA's Google-hosted e-mail platform.

l findings and recommendations of the NOAA Corps Annual Review Board held in April 2017. This recor

e the information in the following format: electronic.

[redacted]

signs for the project issued for use in b i dding , all preliminary and final bids, proposals or other su

iliated with the National Weather Service.

time period for this item of the request is December 1, 2009 to the present. 2. All records of communic

e during the course of my employment as an observer for this observer program. 8) Any information on t

Search terms may include, but are not limited to, “Cause of Action,” “CoA,” “Julie Smith,” “Eric Bo

ng to, relating to, or regarding water quality in the Arroyo Grande Creek, including bu
ncluding but not limited to, federal Clean Water Act compliance and im
r August 19, 2015 referring to, relating to, or regarding water quality in the Arroyo Sa

ng any records relating to draft and/or final biological evaluations of diazinon under the Endangered Spe
dance, (b) how NMFS plans to use and implement the Technical Guidance, (c) circumstances under w

rs Inc., Ocean Bistro Corporation, MPI Fisheries Imports Inc., Kou Family Partners LL
easonably related to the subject matter of this request. If you or your offi

, 2015, during which these groups purportedly "formally called for the creation of the At

clude the initial permit, # of cetaceans included in permit, originatio

leral surfclam or ocean quahog regulations, imposed on surfclam or ocean quahog ITQ
ose official letters and official memoranda from the period of January 1, 200

ado.edu], 3. Paula Robinson [paula.robinson@colorado.edu], 4. Kathleen Human [Kathleen.human@co
Hager regarding any and all directives given to her by the Executive Director or Deputy Dir

g the Stranding, including how the event was discovered, the condition of the animals, any
s it applies to authorizations for the taking of marine mammals inc

c Right Whale critical habitat, southwestern sea otter critical habitat, etc.;
visions regarding New Jersey's recreational management of summer flounder during the 2017 season;
nic mail messages) concerning any ESA section 10 permits that have been applied for or issued, pe
SA. Please note that this request does not apply to documents

h 3. Alan Risenhoover 4. Roy Crabtree 5. Andy Strelcheck 6. George Kelly 7. Earl Co
g., arrest, conviction, ongoing investigation). If any portion is redacted, I reque
s Management Council Dan Evans - North Pacific Fisheries Management Council Steve Maclean - Nortl
ngressional input, legal analysis, meeting invitations, meeting agendas, meeting minutes or other such i

ees for the 10 years preceding a response to this request. 5) All WPRFMC Forms SF
nber for the 2 years preceding a response to this request. 5) For each Council member
s. 4) To the extent not otherwise disclosed with the formal books of accounts, document
9, 2017 until January 14, 2017. For purposes of this request, "near
oelke Jamie Cournane Rachel Feeney Lou Goodreau Demet Haksever Fiona Hogan Jona

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

h or commentary, not currently available to the public concerning the specific eff
animals 6)Total discarded dead—by number of animals 7)Total discarded w

ons, I request that those records to which this does not apply be provided to me. I also request th

ords of correspondence between and amongst NOAA and (1) the Depar

ncluding all amendments and additions thereto). 4. Any other information (including
gh Island A-389A (HI-A-389A)" dated August 16, 2017; certain "Letter to All Interested Pa
na Nation, where the agreement involves or relates to Portland Harbor, the Lower Columbia River,
tuaries (ONMS), the Monterey Bay National Marine Sanctuary (MBNMS), National Marine San

les, telephone logs, papers published and/or unpublished, reports, studies, photogr
es Program. 4. Any and all documents related to the Louisiana State and Local Coastal Resources Man
d, "ReVisiting Model Projections of Lower River Fish PCBs Using Model Em

owever, the final reports issued by the Center had revised central pressure readings - the result of data

ımittee Bylaws; 8. Email from Robert Atlas to Ko Barrett during the week of July 3 regarding Nicole S. M
)ther NOAA correspondence that contain the matching description of or related to NEWS (National Ener

from aircraft flying to and from Fort Hunter Liggett in southern Monterey County.

t; 2936, in light of its charge “to advise on the engagement of stakeholders, and on sustained as

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, January 4, 2018 1:13 PM
To: Robert Swisher - NOAA Federal; Ed Kearns - NOAA Federal; Dennis Morgan - NOAA Federal; Lola Stith - NOAA Affiliate; Robert Hogan
Cc: Roxie Allison-Holman - NOAA Federal; Jackie Rolleri - NOAA Federal
Subject: Draft Monthly FOIA Report
Attachments: FOIA Monthly Status Report 12-31-2017.xlsx; FOIA Monthly Status Report 12-31-2017.pdf; Judicial Watch Request Karl-Holdren.pdf; Re-Filed JW v. DOC Complaint.pdf

Good Afternoon--

Here is the draft report for December.

Please let me know if anyone has any changes or suggestions for this one.

(b)(5) [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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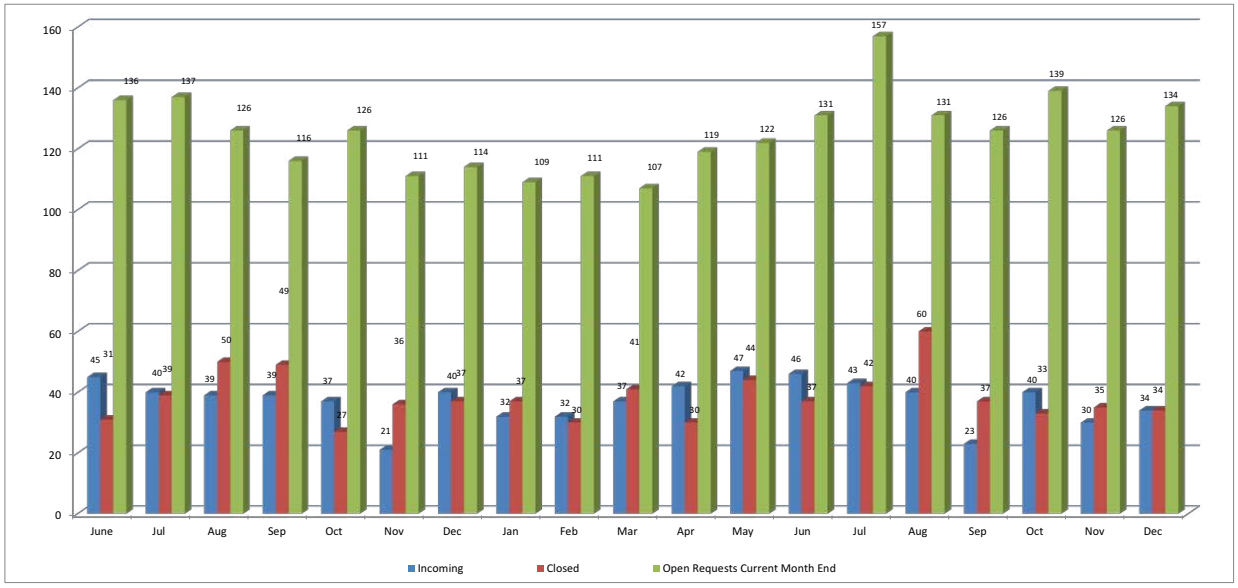
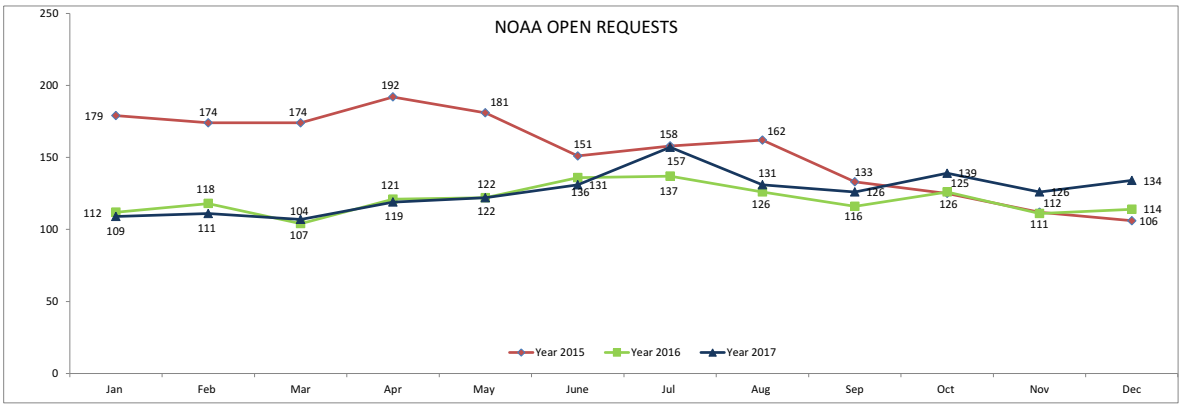
FOIA Monthly Status Report 12-31-2017

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	5	3	3	6	0	1	1	2
CAO	2	1	1	2	1	0	0	1
CFO	0	0	0	0	0	0	0	0
CIO	0	0	0	0	0	0	0	0
CIO/FOIA	2	5	3	8	2	0	0	2
GC	5	0	1	4	2	2	0	4
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	3	1	2	2	0	2	0	2
NMFS	60	17	15	67	24	14	4	42
NOS	14	2	4	10	6	0	0	6
NWS	9	1	4	6	2	1	0	3
OAR	13	2	1	14	6	2	0	8
OMAO	2	1	0	3	2	0	0	2
OC	3	0	0	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	5	0	0	6	6	0	0	6
WFMO	2	1	0	2	1	0	0	1
NOAA Totals	**126**	**34**	**34**	**134**	**56**	**22**	**5**	**83**

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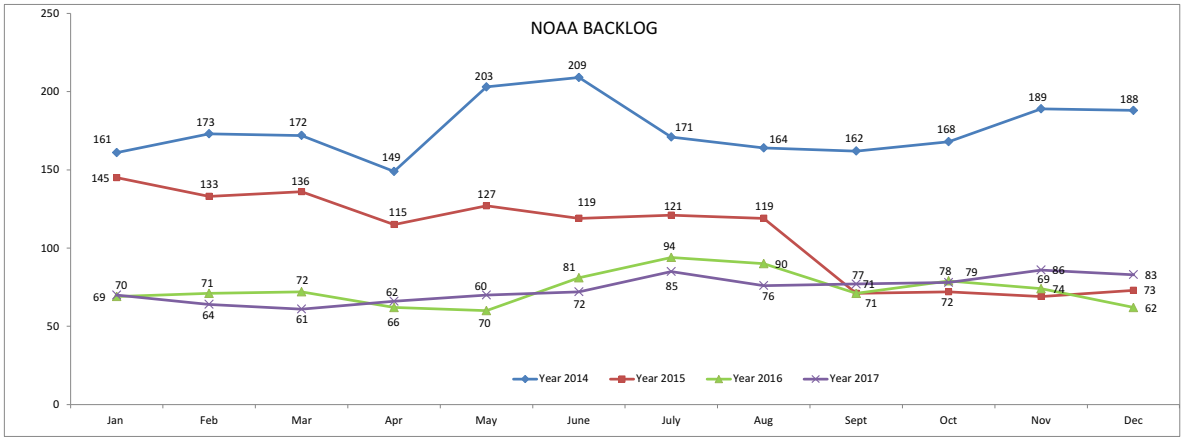
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OMAO	2	1	0	3	2	0	0	2
OC	3	0	0	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	5	0	0	6	6	0	0	6
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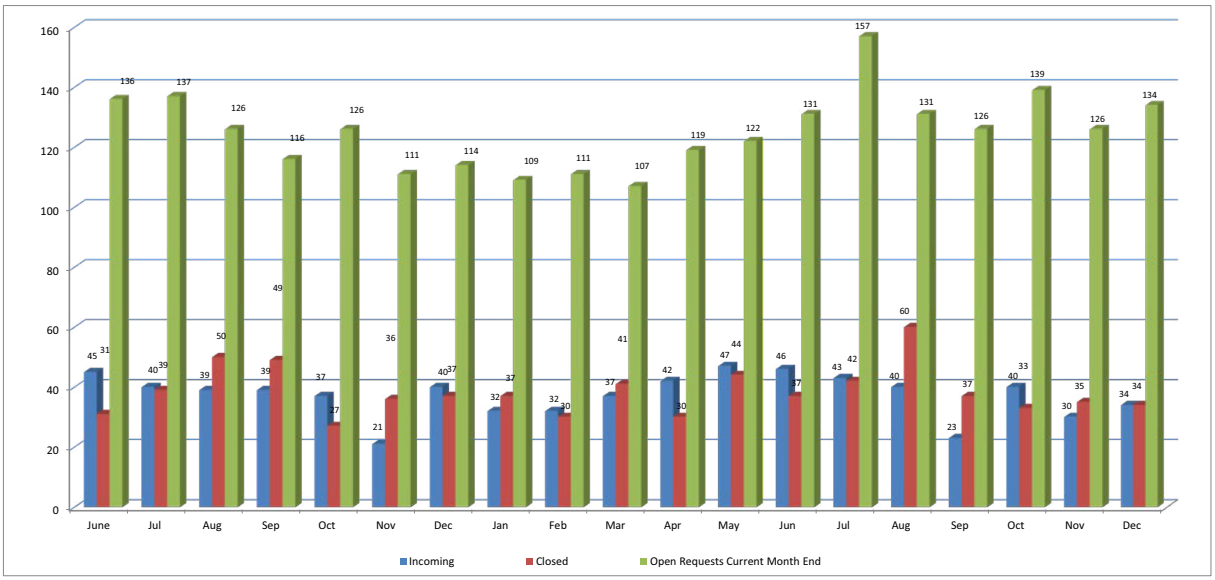

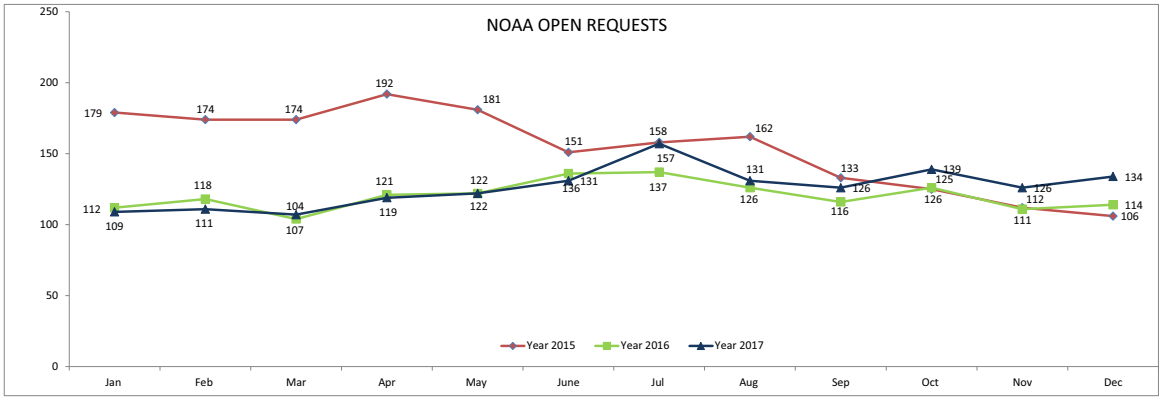
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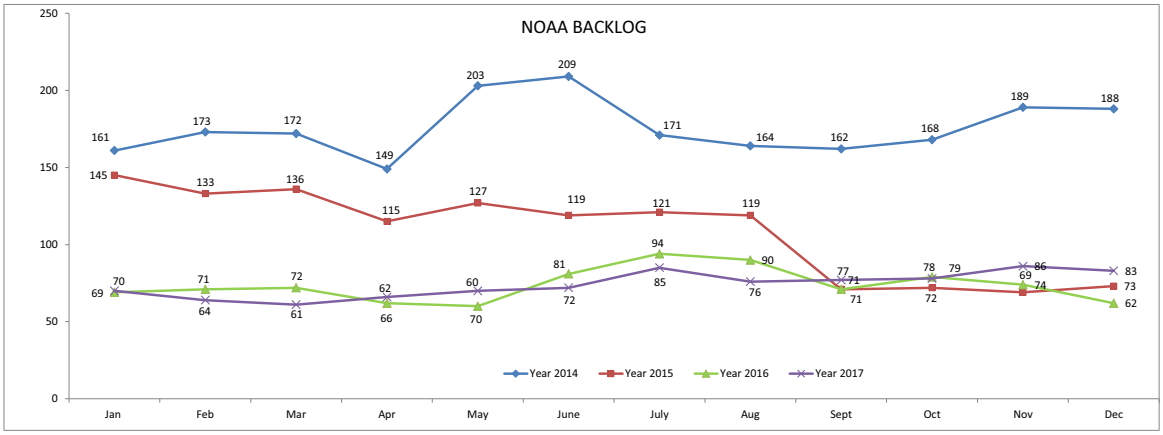
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Judicial Watch®
Because no one is above the law!

February 6, 2017

VIA CERTIFIED MAIL

National Oceanographic and
Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Judicial Watch, Inc. ("Judicial Watch") hereby requests that the National Oceanographic and Atmospheric Administration ("NOAA") produce the following records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"):

> Any and all records of communication between NOAA scientist Thomas Karl and Director of the Office of Science and Technology Policy John Holdren.
>
> The time frame for the requested records is January 20, 2009 through January 20, 2017.

Please determine whether to comply with this request within the time period required by FOIA and notify us immediately of your determination, the reasons therefor, and the right to appeal any adverse determination to the head of the agency or his or her designee. 5 U.S.C. § 552(a)(6)(i). Please also produce all responsive records in an electronic format ("pdf" is preferred), if convenient. We also are willing to accept a "rolling production" of responsive records if it will facilitate a more timely production.

Judicial Watch also hereby requests a waiver of both search and duplication fees. We are entitled to a waiver of search fees because we are a "representative of the news media." *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also Cause of Action v. Federal Trade Comm.*, 799 F.3d 1108 (D.C. Cir. 2015); *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381 (D.C. Cir. 1989). For more than twenty years, Judicial Watch has used FOIA and other investigative tools to gather information about the operations and activities of government, a subject of undisputed public interest. We submit over 400 FOIA requests annually. Our personnel, which includes experienced journalists and professional writers on staff and under contract, use their editorial skills to turn this raw information into

425 Third St., SW, Suite 800, Washington, DC 20024 · Tel: (202) 646-5172 or 1-888-593-8442
FAX: (202) 646-5199 · Email: info@JudicialWatch.org · www.JudicialWatch.org

distinct works that are disseminated to the public via our monthly newsletter, which has a circulation of over 300,000, weekly email update, which has over 600,000 subscribers, investigative bulletins, special reports, www.judicialwatch.org website, *Corruption Chronicles* blog, and social media, including Facebook and Twitter, among other distribution channels. We have authored several books, including *Corruption Chronicles* by Tom Fitton (Threshold Editions, July 24, 2012), and another book, *Clean House* by Tom Fitton (Threshold Editions, Aug. 30, 2016), is forthcoming. In 2012, we produced a documentary film, "District of Corruption," directed by Stephen K. Bannon. Our "news media" status has been confirmed in court rulings. *See, e.g., Judicial Watch, Inc. v. U.S. Dep't of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006); *Judicial Watch, Inc. v. U.S. Dep't of Justice,* 133 F. Supp.2d 52 (D.D.C. 2000). As a tax exempt, 501(c)(3) non-profit corporation, we have no commercial interests and do not seek the requested records for any commercial use. Rather, we intend to use the requested records as part of our on-going investigative journalism and public education efforts to promote integrity, transparency, and accountability in government and fidelity to the rule of law.

Judicial Watch also is entitled to a waiver of both search fees and duplication fees because "disclosure of the information is in the public interest." 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure of the requested records undoubtedly will shed light on "the operations or activities of the government." *Cause of Action*, 799 F.3d at 1115 (*quoting* 5 U.S.C. § 552(a)(4)(A)(iii)). Disclosure also is "likely to contribute significantly to the public understanding" of those operations or activities because, among other reasons, Judicial Watch intends to disseminate both the records and its findings to "a reasonably broad audience of persons interested in the subject" via its newsletter, email updates, investigative bulletins, website, blog, and its other, regular distribution channels. *Cause of Action*, 799 F.3d at 1116 (*quoting Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 815 (2d Cir. 1994)). Again, Judicial Watch does not seek the requested records for any commercial benefit or for its own "primary" benefit, but instead seeks them as part of its ongoing investigative journalism and public education efforts to promote integrity, transparency, and accountability in government and fidelity to the rule of law.

In the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch agrees to pay up to $300.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or bmarshall@judicialwatch.org.

Thank you for your cooperation.

Very respectfully,

William F. Marshall
Judicial Watch, Inc.

425 Third St., SW, Suite 800, Washington, DC 20024 ◦ Tel: (202) 646-5172 or 1-888-593-8442
FAX: (202) 646-5199 ◦ Email: info@JudicialWatch.org ◦ www.JudicialWatch.org

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC., 425 Third Street SW, Suite 800 Washington, DC 20024, Plaintiff, v. UNITED STATES DEPARTMENT OF COMMERCE, 1401 Constitution Avenue, NW Washington, DC 20230, Defendant.	)	Civil Action No.

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

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, June 19, 2017 2:15 PM
To: Martha McCoy - NOAA Federal
Cc: Kimberly Katzenbarger - NOAA FEDERAL
Subject: Re: Quick FOIA question

(b)(5) [redacted].

Kim, do you agree?

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 7:10 AM, Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov> wrote:

Hi Mark and Kim,

I have a quick FOIA question that I would love your thoughts and expertise on, if you have time. (b)(5) [redacted]

[redacted] Do you agree?

(b)(5) [redacted]

Thank you so much in advance,

Marty

---------- Forwarded message ----------
From: **Aida Pettegrue** <aida.pettegrue@noaa.gov>
Date: Thu, Jun 15, 2017 at 12:29 PM
Subject: Re: FOIA 2017-001233 - Requester: Derek Miller - RE: ONMS/MBNMS Correspondence with Foundations
To: Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov>
Cc: Scott Kathey <Scott.Kathey@noaa.gov>, Michelle Mills <Michelle.Mills@noaa.gov>

Hi Marty:

(b)(5) [redacted]?

Can you please advise us on the next steps we should take?

Thank you very much.

aida

On 6/15/2017 11:44 AM, Stephanie Altman - NOAA Federal wrote:

> Aida,
>
> Marty McCoy (copied here) is the lead attorney for Monterey Bay and can assist you with this matter.
>
> Thanks,
> Stephanie
>
> On Monday, June 12, 2017, Aida Pettegrue <aida.pettegrue@noaa.gov> wrote:
>
> > Hi Stephanie:
> >
> > (b)(5) [redacted].
> >
> > Thank you.
> >
> > Aida

-------- Forwarded Message --------

Subject: Re: Your FOIA Request to NOAA (DOC-NOAA-2017-001233)
Date: Mon, 12 Jun 2017 13:02:31 -0700
From: Scott Kathey <scott.kathey@noaa.gov>
Reply-To:scott.kathey@noaa.gov
Organization:NOAA Monterey Bay National Marine Sanctuary
To: Derek J. Miller <derek@savingseafood.org>
CC: Hayes, Dawn <dawn.hayes@noaa.gov>, Pettegrue, Aida <aida.pettegrue@noaa.gov>

Derek,

Ms. Pettegrue and I have not yet received any written clarification from you or Saving Seafood regarding modification of your May 2017 FOIA request. Please respond to the queries in my June 5 email request (below) at your earliest opportunity.

Thank you,

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
FAX: 831-647-4250

On 6/5/17 2:41 PM, Scott Kathey wrote:

> Derek,
>
> Thank you for the quick response and explanation. We'll stand by for your clarification within the next couple of days.
>
> Take care,
>
> 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
> FAX: 831-647-4250
>
> ---
>
> On 6/5/17 2:31 PM, Derek J. Miller wrote:

Scott,

Apologies for the delay in following up on our call last week. The course of action described in your email is still my intention but I need to run it by someone else who was out of the country last week and returns today.

I will speak to them and get back to you by Wednesday.

Best,
Derek

Derek Miller

address: 3050 K Street, NW | Suite 350 | Washington, DC 20007
tel: (202) 795-9513 | mobile: (607) 321-9765 | web: savingseafood.org | Twitter | Facebook

On Jun 5, 2017, at 5:27 PM, Scott Kathey <scott.kathey@noaa.gov> wrote:

Mr. Miller,

After the phone conversation between you, Dawn Hayes and myself last Wednesday (May 31), we anticipated receipt of an email from you clarifying your wishes regarding your 5/19/2017 Freedom of Information Act (FOIA) request for all 2016 correspondence about Monterey Bay National Marine Sanctuary (MBNMS) between NOAA's Office of National Marine Sanctuaries and supporting foundations.

At the conclusion of our phone call last week, it was our understanding that you had decided to make a direct request to MBNMS for a synthesized report and supporting documents, in lieu of the aforementioned FOIA request. It was also our understanding that you planned to formally withdraw your FOIA request through a written email notice to Ms. Pettegrue (the ONMS FOIA Liaison), copied above. But we have received no such correspondence.

Since you specifically seek a description of each MBNMS activity funded (in part or whole) in CY2016 by a sanctuary foundation and an accounting of funds transferred by project, we could synthesize and provide the material more effectively through a simple information request

to our office. Under FOIA, we can only provide pre-existing documents in raw form within a set of regulated conditions and time frames. FOIA responses do not include analysis, interpretation, or prioritization of the data. That is the responsibility of the requestor under FOIA. FOIA also requires review and tracking of the response process that can require considerable time and cost.

Unless we receive a written confirmation from you soon that you wish to withdraw your FOIA request, we must assume it is still in effect and will prioritize our time and attention to respond to that formal request. In that case, we will still need written clarification from you regarding the focused nature of the correspondence you seek under FOIA. Otherwise, you will likely receive many documents that have no relationship whatsoever to your subject of interest due to the general nature of your original written request. Since the FOIA process is quite prescriptive, we can only respond to your written requests that are on file. Changes to, or withdrawal of a formal FOIA request, must be made in writing.

Should you withdraw your FOIA request in favor of a customized report at this time, it will not in any way limit your ability to submit FOIA requests in the future.

Please let us know how you wish to proceed.

Thank you,

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
FAX: 831-647-4250

--
Stephanie Altman
Chief
General Counsel Office- Oceans and Coasts Section
National Oceanic and Atmospheric Administration
301-713-7390 (Silver Spring office)
(b)(6) [redacted] (cell)

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--

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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From: Kimberly Katzenbarger - NOAA Federal <kimberly.katzenbarger@noaa.gov>
Sent: Monday, June 19, 2017 2:52 PM
To: Mark Graff - NOAA Federal
Cc: Martha McCoy - NOAA Federal; Jackie Rolleri - NOAA Federal
Subject: Re: Quick FOIA question

(b)(5) [redacted]).

On Mon, Jun 19, 2017 at 2:14 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5) [redacted].

Kim, do you agree?

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 7:10 AM, Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov> wrote:

Hi Mark and Kim,

I have a quick FOIA question that I would love your thoughts and expertise on, if you have time. (b)(5) [redacted]

(b)(5) [redacted]

[redacted]?

Alternatively (b)(5) [redacted]?

Thank you so much in advance,

Marty

---------- Forwarded message ----------
From: **Aida Pettegrue** <aida.pettegrue@noaa.gov>
Date: Thu, Jun 15, 2017 at 12:29 PM
Subject: Re: FOIA 2017-001233 - Requester: Derek Miller - RE: ONMS/MBNMS Correspondence with Foundations
To: Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov>
Cc: Scott Kathey <Scott.Kathey@noaa.gov>, Michelle Mills <Michelle.Mills@noaa.gov>

Hi Marty:

(b)(5) [redacted]?

Can you please advise us on the next steps we should take?

Thank you very much.

aida

On 6/15/2017 11:44 AM, Stephanie Altman - NOAA Federal wrote:

> Aida,
>
> Marty McCoy (copied here) is the lead attorney for Monterey Bay and can assist you with this matter.
>
> Thanks,
> Stephanie
>
> On Monday, June 12, 2017, Aida Pettegrue <aida.pettegrue@noaa.gov> wrote:
>
> > Hi Stephanie:

(b)(5) [redacted].

Thank you.

Aida

-------- Forwarded Message --------

Subject: Re: Your FOIA Request to NOAA (DOC-NOAA-2017-001233)
Date: Mon, 12 Jun 2017 13:02:31 -0700
From: Scott Kathey <scott.kathey@noaa.gov>
Reply-To: scott.kathey@noaa.gov
Organization: NOAA Monterey Bay National Marine Sanctuary
To: Derek J. Miller <derek@savingseafood.org>
CC: Hayes, Dawn <dawn.hayes@noaa.gov>, Pettegrue, Aida <aida.pettegrue@noaa.gov>

Derek,

Ms. Pettegrue and I have not yet received any written clarification from you or Saving Seafood regarding modification of your May 2017 FOIA request. Please respond to the queries in my June 5 email request (below) at your earliest opportunity.

Thank you,

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
FAX: 831-647-4250

On 6/5/17 2:41 PM, Scott Kathey wrote:

> Derek,
>
> Thank you for the quick response and explanation. We'll stand by for your clarification within the next couple of days.

Take care,

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
FAX: 831-647-4250

On 6/5/17 2:31 PM, Derek J. Miller wrote:

Scott,

Apologies for the delay in following up on our call last week. The course of action described in your email is still my intention but I need to run it by someone else who was out of the country last week and returns today.

I will speak to them and get back to you by Wednesday.

Best,
Derek

Derek Miller

address: 3050 K Street, NW | Suite 350 | Washington, DC 20007
tel: (202) 795-9513 | mobile: (607) 321-9765 | web: savingseafood.org | Twitter | Facebook

On Jun 5, 2017, at 5:27 PM, Scott Kathey <scott.kathey@noaa.gov> wrote:

Mr. Miller,

After the phone conversation between you, Dawn Hayes and myself last Wednesday (May 31), we anticipated receipt of an email from you clarifying your wishes regarding your 5/19/2017 Freedom of Information Act (FOIA) request for all 2016 correspondence about Monterey Bay National Marine Sanctuary (MBNMS) between NOAA's Office of National Marine Sanctuaries and supporting foundations.

At the conclusion of our phone call last week, it was our understanding that you had decided to make a direct request to MBNMS for a

synthesized report and supporting documents, in lieu of the aforementioned FOIA request. It was also our understanding that you planned to formally withdraw your FOIA request through a written email notice to Ms. Pettegrue (the ONMS FOIA Liaison), copied above. But we have received no such correspondence.

Since you specifically seek a description of each MBNMS activity funded (in part or whole) in CY2016 by a sanctuary foundation and an accounting of funds transferred by project, we could synthesize and provide the material more effectively through a simple information request to our office. Under FOIA, we can only provide pre-existing documents in raw form within a set of regulated conditions and time frames. FOIA responses do not include analysis, interpretation, or prioritization of the data. That is the responsibility of the requestor under FOIA. FOIA also requires review and tracking of the response process that can require considerable time and cost.

Unless we receive a written confirmation from you soon that you wish to withdraw your FOIA request, we must assume it is still in effect and will prioritize our time and attention to respond to that formal request. In that case, we will still need written clarification from you regarding the focused nature of the correspondence you seek under FOIA. Otherwise, you will likely receive many documents that have no relationship whatsoever to your subject of interest due to the general nature of your original written request. Since the FOIA process is quite prescriptive, we can only respond to your written requests that are on file. Changes to, or withdrawal of a formal FOIA request, must be made in writing.

Should you withdraw your FOIA request in favor of a customized report at this time, it will not in any way limit your ability to submit FOIA requests in the future.

Please let us know how you wish to proceed.

Thank you,

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
FAX: 831-647-4250

--
Stephanie Altman
Chief
General Counsel Office- Oceans and Coasts Section
National Oceanic and Atmospheric Administration
301-713-7390 (Silver Spring office)
(b)(6) [redacted] (cell)

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--

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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--

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
Cell (b)(6) [redacted]

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From: Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov>
Sent: Monday, June 19, 2017 2:57 PM
To: Kimberly Katzenbarger - NOAA Federal
Cc: Mark Graff - NOAA Federal; Jackie Rolleri - NOAA Federal
Subject: Re: Quick FOIA question

Great, thanks so much to both of you for taking the time to provide your insights and recommendations for this question!

Best,

Marty

On Mon, Jun 19, 2017 at 2:52 PM, Kimberly Katzenbarger - NOAA Federal <kimberly.katzenbarger@noaa.gov> wrote:

(b)(5) [redacted]).

On Mon, Jun 19, 2017 at 2:14 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

I think there is a reasonable basis behind either argument--however, I would lean toward (b)(5) [redacted].

Kim, do you agree?

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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Thank you so much in advance,

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Thank you very much.

aida

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Aida,

Marty McCoy (copied here) is the lead attorney for Monterey Bay and can assist you with this matter.

Thanks,
Stephanie

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Hi Stephanie:

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Thank you.

Aida

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Date: Mon, 12 Jun 2017 13:02:31 -0700
From: Scott Kathey <scott.kathey@noaa.gov>
Reply-To: scott.kathey@noaa.gov
Organization: NOAA Monterey Bay National Marine Sanctuary
To: Derek J. Miller <derek@savingseafood.org>
CC: Hayes, Dawn <dawn.hayes@noaa.gov>, Pettegrue, Aida <aida.pettegrue@noaa.gov>

Derek,

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Thank you,

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

FAX: 831-647-4250

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Derek,

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Scott Kathey
Federal Regulatory Coordinator
Monterey Bay National Marine Sanctuary
National Oceanic & Atmospheric Administration
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Scott,

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I will speak to them and get back to you by Wednesday.

Best,
Derek

Derek Miller

address: 3050 K Street, NW | Suite 350 | Washington, DC 20007
tel: (202) 795-9513 | mobile: (607) 321-9765 | web: savingseafood.org | Twitter | Facebook

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Thank you,

Scott

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Scott Kathey
Federal Regulatory Coordinator
Monterey Bay National Marine Sanctuary
National Oceanic & Atmospheric Administration
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99 Pacific Street, Bldg 455A
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Stephanie Altman
Chief
General Counsel Office- Oceans and Coasts Section
National Oceanic and Atmospheric Administration
301-713-7390 (Silver Spring office)
(b)(6) [redacted] (cell)

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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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--

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
Cell (b)(6)

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--

Martha McCoy

Attorney-Advisor

NOAA Office of the General Counsel, Oceans and Coasts Section

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From: Miller, Michael D. <MMiller@ntia.doc.gov>
Sent: Wednesday, June 21, 2017 3:49 PM
To: Mark Graff - NOAA Federal
Subject: RE: NTIA's Alternative DLP Proposal
Attachments: Policy for NTIA Data Loss Prevention _Catharine Edits.docx

Mark,

I'm sorr (b)(5) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Please let me know if there is something else I can assist with as you take on DLP in your environment.

Regards,
Mike

Michael Miller
Michael Miller, MSIT, CISSP
Cyber Security Operations Branch Chief
Dept. of Commerce
National Telecommunications and
Information Administration
1401 Constitution Ave. NW
Room 6888
Washington, DC 20230
202-482-6916

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Tuesday, June 13, 2017 12:10 PM
To: Miller, Michael D. <MMiller@ntia.doc.gov>
Subject: Re: NTIA's Alternative DLP Proposal

Will do--thank you for the quick reply, and I'll reach out later to touch base.

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 Tue, Jun 13, 2017 at 12:07 PM, Miller, Michael D. <MMiller@ntia.doc.gov> wrote:

> Mark,
>
> It could take a couple days to get back to you on this since I have a DOC data call that is due tomorrow and requires a huge amount of writing and research.
>
> I'm just trying to remember exactly what I did with that gem of writing for privacy.
>
> It could take me a while to find it if it isn't in a 'regular' place in my files.
>
> If you don't hear from me before Friday, ping me again or give me a call
>
> Regards,
>
> Mike
>
> *Michael Miller*
>
> Michael Miller, MSIT, CISSP
>
> Cyber Security Operations Branch Chief

Dept. of Commerce

National Telecommunications and

Information Administration

1401 Constitution Ave. NW

Room 6888

Washington, DC 20230

202-482-6916

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Tuesday, June 13, 2017 11:55 AM
To: Miller, Michael D. <MMiller@ntia.doc.gov>
Cc: Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>; Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov>; Stefan Leeb - NOAA Federal <stefan.leeb@noaa.gov>; David Bedell - NOAA Federal <David.Bedell@noaa.gov>; Chi Kang - NOAA Federal <chi.y.kang@noaa.gov>
Subject: NTIA's Alternative DLP Proposal

Good Afternoon Mr. Miller,

On May 25, NOAA Privacy, as well as NOAA General Counsel for Labor & Relations briefed DOC/OPOG on the status of the DLP Solution Rollout here at NOAA. Notably, during that briefing, (b)(5) [redacted]

[redacted]

[redacted]?

A copy of NOAA's already-approved DLP Plan is attached for reference. Thank you in advance.

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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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, January 4, 2018 4:51 PM
To: Adam Dilts - NOAA Federal
Cc: Lauren Bregman - NOAA Federal
Subject: Re: EO 13795 Request Tasking Structure and Search
Attachments: National Monuments and EO 13795 FOIAOnline pull.xls

Hello Adam,

Of course--sorry to leave you off the initial string.

(b)(5) [redacted]

[redacted]. We'll let you know as soon as there is any additional information.

Let me know anything you need on my end--

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 Thu, Jan 4, 2018 at 4:30 PM, Adam Dilts - NOAA Federal <adam.dilts@noaa.gov> wrote:

Hi Mark (b)(5) [redacted]

[redacted]? Thanks.

Adam Dilts
Deputy Chief
Oceans & Coasts Section
Office of the General Counsel
National Oceanic and Atmospheric Administration
1305 East-West Highway
SSMC4, Suite 6111
Silver Spring, MD 20910
adam.dilts@noaa.gov

Office (301) 713-7392
Cel (b)(6) [redacted]

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---------- Forwarded message ----------
From: **Lauren Bregman - NOAA Federal** <lauren.bregman@noaa.gov>
Date: Thu, Jan 4, 2018 at 4:18 PM
Subject: Fwd: EO 13795 Request Tasking Structure and Search
To: Adam Dilts - NOAA Federal <adam.dilts@noaa.gov>

Hi Adam,

I believe you should have received this e-mail, too.

Thanks,
Lauren
---------- Forwarded message ----------
From: **Mark Graff - NOAA Federal** <mark.graff@noaa.gov>
Date: Thu, Jan 4, 2018 at 3:59 PM
Subject: EO 13795 Request Tasking Structure and Search
To: Jackie Rolleri - NOAA Federal <jackie.rolleri@noaa.gov>, Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov>, Laura Cesario - NOAA Federal <laura.cesario@noaa.gov>, Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>, Lauren Bregman - NOAA Federal <lauren.bregman@noaa.gov>, Aida Pettegrue - NOAA Federal <aida.pettegrue@noaa.gov>, Stephanie Altman - NOAA Federal <stephanie.altman@noaa.gov>, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, "Toland, Michael" <mtoland@doc.gov>

Hey Guys,

This outlines how that internal NOAA tasking is going to proceed following receipt of the remaining taskings from DOC. Please let me know if I failed to capture an aspect of the process we had all discussed:

(b)(5) [redacted]

[redacted]

[redacted].

(b)(5) [redacted]

[redacted]

[redacted]

[redacted]

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

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--

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
Cell (b)(6) [redacted]

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(b)(5)

From: Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>
Sent: Friday, January 5, 2018 10:53 AM
To: Mark Graff - NOAA Federal
Subject: Fwd: DOC-NOAA-2018-000453
Attachments: 2017 12 19 Am NOAA FOIA_sea grant enviro review.pdf; NOAA FOIA_sea grant enviro review_12 15 17.pdf

Mark,

Can you help clarify the question below. Thanks, Annie

---------- Forwarded message ----------
From: **OAR SG Taskers** <oar.sg.taskers@noaa.gov>
Date: Tue, Jan 2, 2018 at 10:44 AM
Subject: Fwd: DOC-NOAA-2018-000453
To: Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>
Cc: Jonathan Pennock - NOAA Service Account <jonathan.pennock@noaa.gov>, Aria Remondi - NOAA Federal <aria.remondi@noaa.gov>, Dorn Carlson <dorn.carlson@noaa.gov>, Rebecca Briggs - NOAA Federal <rebecca.briggs@noaa.gov>, Jess Beck - NOAA Federal <jess.beck@noaa.gov>, David Chorney - NOAA Federal <david.chorney@noaa.gov>, Brady Phillips - NOAA Federal <brady.phillips@noaa.gov>, Elizabeth Diamond - NOAA Affiliate <elizabeth.diamond@noaa.gov>, Jonathan Eigen <jonathan.eigen@noaa.gov>

Hello Annie,

(b)(5) [redacted]

[redacted]

[redacted]. Please respond to all parties associated with this email.

Thanks,
Susan Holmes

---------- Forwarded message ----------
From: **Annie Thomson - NOAA Federal** <annie.thomson@noaa.gov>

Date: Fri, Dec 29, 2017 at 12:22 PM
Subject: Fwd: DOC-NOAA-2018-000453
To: Dorn Carlson - NOAA Federal <dorn.carlson@noaa.gov>, Susan Holmes - NOAA Affiliate <susan.holmes@noaa.gov>, Sandra Salyers - NOAA Federal <sandra.salyers@noaa.gov>

Hello,
Please see below email message.

YOUR REQUIRED ACTIONS:

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

[redacted]

[redacted]

[redacted]

[redacted].

---------- Forwarded message ----------
From: **Samuel Dixon** <samuel.dixon@noaa.gov>
Date: Thu, Dec 28, 2017 at 4:26 PM
Subject: DOC-NOAA-2018-000453
To: Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>

Hi Annie,

(b)(5) [redacted]. Just wanted to give you a heads up.

"Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Friends of the Earth requests all records pertaining to any environmental review, assessment, consultation, or other procedures conducted the National Oceanic and Atmospheric Administration (NOAA) pursuant to any environmental and wildlife protection or conservation laws, including but not limited to, the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., and/or the Endangered Species Act, 16 U.S.C. § 1531 et seq., with regard to NOAA's recent announcement of the National Sea Grant College Program 2018 Ocean, Coastal and Great Lakes National Aquaculture Initiative."

Thanks,

Samuel Dixon
NMFS Assistant FOIA Liaison
Contractor - IBSS Corp
(301) 427-8739

samuel.dixon@noaa.gov

--
Susan Holmes
National Sea Grant Office
National Oceanic and Atmospheric Administration (NOAA)
U.S. Department of Commerce
301.734.1077
susan.holmes@noaa.gov
Website: http://seagrant.noaa.gov/
Twitter: http://twitter.com/SeaGrant
Facebook: http://www.facebook.com/NOAA.SeaGrant

December 20, 2017 *Submitted via FOIAonline*.

NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

Re: Freedom of Information Act Request for Records Relating to Sea Grant Funding Opportunity for Aquaculture

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Friends of the Earth requests all records pertaining to any environmental review, assessment, consultation, or other procedures conducted the National Oceanic and Atmospheric Administration (NOAA) pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq*., and/or the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq*., with regard to NOAA's recent announcement of the National Sea Grant College Program 2018 Ocean, Coastal and Great Lakes National Aquaculture Initiative.[1]

This request pertains specifically to any ESA Section 7 consultations, and NEPA categorical exclusion justifications, NEPA environmental assessments, and NEPA environmental impact statements, including any records related to the preparation of such documents and the documents themselves. These records should include, but not be limited to, any internal or external correspondence regarding the application of the aforementioned laws and preparation of assessments, statements, and consultations; any meetings or communications or other contact—including meeting minutes and scheduling notes—that involve the application of the aforementioned laws and preparation of assessments, statements, and consultations; as well as any findings, conclusions, recommendations, or actions taken.

For this request, the term "records" refers to, but is not limited to, correspondence of any kind, memoranda, letters, notes, schedules, electronic mail, telephone logs, minutes of meetings, work papers, reports, studies, or data.

The FOIA provides that if portions of a document are exempt from release, the remainder must nevertheless be segregated and disclosed, so please provide us with all non-exempt portions of any exempt records. 5 U.S.C. § 552(b); 7 C.F.R. § 1.15(b). Please explain any redactions by reference to specific provisions of the FOIA that allow information to be exempt from disclosure. *See* 7 C.F.R. § 1.7.

[1] NOAA recently announced federal funding opportunity for aquaculture projects on December 14, 2017, in which it has available a total of $7,000,000 to $11,500,000 across fiscal years 2018, 2019 and 2020 to support aquaculture projects in the U.S. Coastal and Great Lakes regions. This project announcement can be found at https://www.grants.gov/web/grants/view-opportunity.html?oppId=299412.

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Fee Waiver Request: As a non-profit organization, Friends of the Earth also requests a waiver of all fees incurred in providing these records. Disclosure of the requested information "is in the public interest because it is likely to contribute significantly to the public understanding of the operation 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)); 15 C.F.R. § 4.11(l) ("Records responsive to a request will be furnished without charge . . . if the requester asks for such a waiver in writing and . . . has demonstrated that [d]isclosure of the requested 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 [d]sclosure of the information is not primarily in the commercial interest of the requester." (internal punctuation marks omitted)).

Disclosure of the requested records "is likely to contribute significantly to public understanding of the operations or activities of the Government" that affect their safety, health, and environment. 15 C.F.R.§ 4.11(l)(1)(i). Friends of the Earth has over 1.5 million members and activists across the United States who place a priority on ensuring that the federal government takes proper considerations for the impacts of its actions on the environment and public health. This starts with knowing what the government is doing, and whether it has fulfilled its legal obligations to prepare NEPA documentation and ESA consultation prior to carrying out federal action. As such, these records have a high "informative value;" they will be "meaningfully informative about Government operations or activities" related to the NEPA and ESA processes, and are not "already in the public domain." *Id.* at § 4.11(l)(2)(ii).

Friends of the Earth has "expertise in the subject area [of aquaculture] and ability and intention to effectively convey information to the public." 15 C.F.R. § 4.11(l)(2)(iii). To that end, we utilize various means of communication to update its members and activists, as well as the media and general public, on government activities that may impact human health and the environment. These methods include, but certainly are not limited to, providing essential information in easy-to-read reports, a quarterly news magazine, fact sheets, press statements, public hearings and events, phone calls, letters to the editor, blogs, email alerts, and webpage updates.[2] Specifically for this request, Friends of the Earth plans to alert its members and activists as to recent government activities that legitimize and support industrial ocean fish farming activities in

[2] *See, e.g.,* Friends of the Earth, Industrial Ocean Fish Farming (last visited Dec. 19, 2017) https://foe.org/projects/industrial-ocean-fish-farming/?issue=335; Friends of the Earth, Action Alert, *Tell Governor Inslee: Protect Puget Sound from salmon net pens* (last visited Dec. 19, 2017) https://us.e-activist.com/page/3557/petition/1?ea.tracking.id=Blog; Friends of the Earth, Press Statement, *Report highlights threats of industrial ocean fish farming* (Oct. 30, 2017), https://foe.org/news/report-highlights-threats-industrial-ocean-fish-farming/; Friends of the Earth, Fact Sheet, Industrial Ocean Fish farming (2017) https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/Friends-of-the-Earth-Industrial-Ocean-Fish-Farming-Fact-Sheet.pdf; Friends of the Earth, *Concerns and Talking Points: Industrial Ocean Fish Farming* (2017) https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2017/11/Peoples-Hearing-Talking-Points.pdf; Friends of the Earth, Blog, *Industrial Ocean Fish Farming—Bad for the Ocean, Fish, and People* (Oct. 17, 2017) https://foe.org/industrial-ocean-fish-farming%E2%80%8A-%E2%80%8Abad-ocean-fish-people/; Friends of the Earth Newsmagazine, *Summer 2017: Sacrificing Public Lands for Private Profit* (Sept. 19, 2017) https://foe.org/resources/sacrificing-public-lands-private-profit/.

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federal waters. These activities have many environmental and socio-economic harms that the government is legally obligated to address before it may provide federal funding assistance. Depending on the information we receive as a result of this FOIA request, Friends of the Earth may also alert the media and the general public as to the funding assistance and levels of environmental review and consultation that were conducted in association with the program.

Friends of the Earth expects to increase its understanding of whether NOAA has fulfilled its NEPA and ESA obligations to review the provision of Sea Grant funding to certain marine aquaculture operations for potential impacts to the environment and endangered or threatened species. We are concerned that NOAA is legitimizing and supporting marine finfish aquaculture without first taking proper steps to consider the array of harms that this industry poses on the ocean ecosystem and public health. We also expect our members, activists, the general public, and the media to increase their understanding of the same.

Friends of the Earth is a not-for-profit charitable organization with no commercial interest in the information requested as defined in 15 C.F.R. §§ 4.11(b)(1). *See also id.* at § 4.11(l)(3). There is no "existence" or "magnitude" to any commercial interested associated with this request, and our "primary interest in disclosure" is simply to benefit the public interest by informing the public and other members of the media as to government activities. *Id.* at § 4.11(l)(3).. Our main purpose in requesting the documents is to increase public knowledge and participation in the government process so fundamental to the effective working of a democracy.[3]

Because of the non-profit, public interest nature of Friends of the Earth, we have extremely limited financial resources with which to cover the copying and search expenses of this request. If our request for a fee waiver is denied and any expenses associated with this request are in excess of $25.00, please obtain our approval before any such charges are incurred.

Timely Response and Request for Rolling Release: Pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I), we expect a response within ten (10) working days of your receipt of this request. If this request is denied in whole or in part, we expect a detailed justification for withholding the records. We also request any segregable portions of records that are otherwise not expected to be disclosed by NOAA in response to this request. Finally, we request that any documents responsive to this

[3] Friends of the Earth also qualifies as a "representative of the news media," and is further entitled to document search and review without charge (as well as the first 100 pages of paper copies free of charge). *See* 15 C.F.R. § 4.11(b)(6) ("Representative of the news media, or news media requester, means any person or entity organized and operated to publish or broadcast news to the public that actively 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.."). Friends of the Earth "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience." *See* 5 U.S.C. § 552(a)(4)(A)(ii); *Nat'l Security Archive v. U.S. Dep't of Defense,* 800 F.2d 1381, 1387 (D.C. Cir. 1989). Friends of the Earth has extensive and well-exercised means to keep the public informed on the operations and activities of the federal government. Friends of the Earth does not merely obtain information and then contact members of the press to relate that information; rather, we independently analyzes the information, draft our own reports and articles on the issues, and disseminate the information broadly through our own publications to our members and other interested persons. *See, e.g., supra*, note 2.

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request be released by NOAA to Friends of the Earth on a rolling basis rather than NOAA holding all of the documents for a one-time release. Friends of the Earth reserves the right to appeal any denial of this request.

If you are not the appropriate official to handle this request, please forward this letter to the appropriate person, and let us know that you have done so. Please contact me at the below email address with any questions you may have about the materials I am requesting. Thank you for your immediate attention to this matter.

Sincerely,

Hallie Templeton
Senior Oceans Campaigner
Friends of the Earth
1101 15th Street NW
Washington, DC 20001
htempleton@foe.org

1101 15th Street, NW • 11th Floor • Washington, DC 20005 • (202) 783-7400 • www.foe.org
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December 7, 2017 *Submitted via FOIAonline*.

NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

Re: Freedom of Information Act Request for Records Relating to Sea Grant Funding Opportunity for Aquaculture

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Friends of the Earth requests all records pertaining to any environmental review, assessment, consultation, or other procedures conducted the National Oceanic and Atmospheric Administration (NOAA) pursuant to any environmental and wildlife protection or conservation laws, including but not limited to, the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq*., and/or the Endangered Species Act, 16 U.S.C. § 1531 *et seq*., with regard to NOAA's recent announcement of the National Sea Grant College Program 2018 Ocean, Coastal and Great Lakes National Aquaculture Initiative.[1]

These records should include, but not be limited to, any internal or external correspondence regarding the aforementioned laws or consultations; any meetings or communications or other contact— including meeting minutes and scheduling notes—that involve the aforementioned laws or consultations; as well as any findings, conclusions, recommendations, or actions taken.

For this request, the term "records" refers to, but is not limited to, correspondence of any kind, memoranda, letters, notes, schedules, electronic mail, telephone logs, minutes of meetings, work papers, reports, studies, or data.

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Disclosure of the requested information would inform the public of governmental activities affecting their safety, health, and environment. Friends of the Earth is a not-for-profit charitable organization with no commercial interest in the information requested and has relevant expertise in the areas of environment and human health and environmental law. Friends of the Earth has a long and active history in addressing threats to human health and the environment posed by government support of open ocean aquaculture. Because of the non-profit, public interest nature of Friends of the Earth, we have extremely limited financial resources with which to cover the copying and search expenses of this request. Our main purpose in requesting the documents is to increase public knowledge and participation in the government process so fundamental to the effective working of a democracy.[2]

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Hallie Templeton
Senior Oceans Campaigner
Friends of the Earth
1101 15th Street NW
Washington, DC 20001

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htempleton@foe.org

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, January 8, 2018 7:49 AM
To: Annie Thomson - NOAA Federal
Subject: Re: DOC-NOAA-2018-000453

Hi Annie--

(b)(5) [redacted]

[redacted].

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [redacted] (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 Fri, Jan 5, 2018 at 10:53 AM, Annie Thomson - NOAA Federal <annie.thomson@noaa.gov> wrote:

Mark,

Can you help clarify the question below. Thanks, Annie

---------- Forwarded message ----------
From: **OAR SG Taskers** <oar.sg.taskers@noaa.gov>
Date: Tue, Jan 2, 2018 at 10:44 AM
Subject: Fwd: DOC-NOAA-2018-000453
To: Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>
Cc: Jonathan Pennock - NOAA Service Account <jonathan.pennock@noaa.gov>, Aria Remondi - NOAA Federal <aria.remondi@noaa.gov>, Dorn Carlson <dorn.carlson@noaa.gov>, Rebecca Briggs - NOAA Federal <rebecca.briggs@noaa.gov>, Jess Beck - NOAA Federal <jess.beck@noaa.gov>, David Chorney - NOAA Federal <david.chorney@noaa.gov>, Brady Phillips - NOAA Federal <brady.phillips@noaa.gov>, Elizabeth Diamond - NOAA Affiliate <elizabeth.diamond@noaa.gov>, Jonathan Eigen <jonathan.eigen@noaa.gov>

Hello Annie,

(b)(5) [redacted]

[redacted]. Please respond to all parties associated with this email.

Thanks,
Susan Holmes

---------- Forwarded message ----------
From: **Annie Thomson - NOAA Federal** <annie.thomson@noaa.gov>
Date: Fri, Dec 29, 2017 at 12:22 PM
Subject: Fwd: DOC-NOAA-2018-000453
To: Dorn Carlson - NOAA Federal <dorn.carlson@noaa.gov>, Susan Holmes - NOAA Affiliate <susan.holmes@noaa.gov>, Sandra Salyers - NOAA Federal <sandra.salyers@noaa.gov>

Hello,
Please see below email message.

YOUR REQUIRED ACTIONS:

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

[redacted]

[redacted].

---------- Forwarded message ----------
From: **Samuel Dixon** <samuel.dixon@noaa.gov>
Date: Thu, Dec 28, 2017 at 4:26 PM
Subject: DOC-NOAA-2018-000453

To: Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>

Hi Annie,

(b)(5) [redacted]. Just wanted to give you a heads up.

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Thanks,

Samuel Dixon
NMFS Assistant FOIA Liaison
Contractor - IBSS Corp
(301) 427-8739
samuel.dixon@noaa.gov

--
Susan Holmes
National Sea Grant Office
National Oceanic and Atmospheric Administration (NOAA)
U.S. Department of Commerce
301.734.1077
susan.holmes@noaa.gov
Website: http://seagrant.noaa.gov/
Twitter: http://twitter.com/SeaGrant
Facebook: http://www.facebook.com/NOAA.SeaGrant

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, January 8, 2018 11:58 AM
To: Lola Stith - NOAA Affiliate; Karen Robin - NOAA Federal
Subject: Fwd: Greenwood_DOC-OS-2017-001648: Follow-up
Attachments: Greenwood_DOC-OS-2017-001648_Search Tasker 1.docx

Hey Guys--

Do we have a thumb on the pulse of this one and the expected ETA on a response to DOC?

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

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

---------- Forwarded message ----------
From: **Khalid, Sulma (Contractor)** <SKhalid@doc.gov>
Date: Mon, Jan 8, 2018 at 11:29 AM
Subject: Greenwood_DOC-OS-2017-001648: Follow-up
To: "Boston, Louis" <Louis.Boston@uspto.gov>, "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>

Good Afternoon

I am writing to follow up with you regarding FOIA request DOC-OS-2017-0001648. On August 4th, 2017, PTO and NOAA were tasked with providing OPOG with records responsive to the following request:

1) Please state the number of staff that joined your department in each of the following months. Please provide a breakdown between political and non-political appointments, and for non-political appointments break the number of joiners down by their civil service grade.

2) Please state the number of staff that left your department in each of the following months. Please provide a breakdown between political and non-political appointments, and for non-political appointments break the number of leavers down by their civil service grade.

On November 15, your Bureau was retasked in FOIAOnline to provide a response by November 30, 2017. Upon review of this case, it appears that OPOG never received records in response to the tasker, or a signed tasker from PTO or NOAA. I have attached a copy of the original tasker here for your convenience. If you have any questions or would like to discuss further, please feel free to contact me at skhalid@doc.gov or x7432.

As this request is now over 100 days old, your prompt attention to this matter is greatly appreciated.

Regards,

Sulma Khalid

FOIA/PA Analyst (Contractor)

U.S. Department of Commerce

Office of Privacy and Open Government

Phone Number: (202) 482-7432

Email: skhalid@doc.gov

UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

November 15, 2017

MEMORANDUM FOR: Vernon E. Curry, CEN
Pam Moulder, ESA
Catherine Fletcher, NIST
Wayne Strickland, NTIS
Mark Graff, NOAA
Jamie Boston, PTO
Jamie Boston, PTO
Jennifer Piel, OIG

FROM: Michael J. Toland, Ph.D.
Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT: FOIA Request George Greenwood
DOC-OS-2017-001648

The U.S. Department of Commerce's FOIA Office, Office of Privacy and Open Government, received a request seeking:

1) Please state the number of staff that joined your department in each of the following months. Please provide a breakdown between political and non-political appointments, and for non-political appointments break the number of joiners down by their civil service grade.

2) Please state the number of staff that left your department in each of the following months. Please provide a breakdown between political and non-political appointments, and for non-political appointments break the number of leavers down by their civil service grade.

3) Please provide the above records pertaining to the following years:

i) December 2000	viii) December 2008	xv) December 2016
ii) January 2001	ix) January 2009	xvi) January 2017
iii) February 2001	ix) January 2009	xvii) February 2017
iv) March 2001	xi) March 2009	xviii) March 2017
v) April 2001	xii) April 2009	xix) April 2017
vi) May 2001	xiii) May 2009	xx) May 2017
vii) June 2001	xiv) June 2009	xxi) June 2017

***Please note that the FOIA does not require agencies to create records in response to a FOIA request. Therefore, if you do not maintain the information requested in records already in existence, you may respond to this tasker with a "no records" response.**

I am sending this FOIA request to you for your attention, since your office has been identified as possibly having records that may be responsive to the request. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
  - You must search every place that could reasonably be expected to have responsive documents.
  - The date range for records that may be responsive to this request is:

i) December 2000	viii) December 2008	xv) December 2016
ii) January 2001	ix) January 2009	xvi) January 2017
iii) February 2001	ix) January 2009	xvii) February 2017
iv) March 2001	xi) March 2009	xviii) March 2017
v) April 2001	xii) April 2009	xix) April 2017
vi) May 2001	xiii) May 2009	xx) May 2017
vii) June 2001	xiv) June 2009	xxi) June 2017

- If you identify any records:
  - Please provide electronic copies of the records to me within ten (10) business days of the date of this letter—on or before November 30, 2017.
    - Upload documents in FOIAonline following the instructions in the attachment entitled "Instructions for uploading documents into FOIAonline."
  - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
    - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
    - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at skhalid@doc.gov.
  - Sign and date the attached Certification of Search.
  - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
  - Check the box "My Office has found no responsive document" on the attached Certification of Search.
  - Sign and date the Certification of Search.
  - Return the completed Certification of Search to my office.

Attachments
1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions

Instructions for uploading documents into FOIAonline

A signed Certification of Search should be uploaded separately in Case File/Correspondence/Other. Only the Certification of Search signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releasable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for "Title" of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleasable; and RU-Redacted-Unreleasable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for "Title:" 15 documents refer to NTIA.

Certification of Search for FOIA Request No. DOC-OS-2017-001648

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

☐ Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.

☐ My office has found no responsive documents.

☐ All disclosure determinations have been made by the Commerce Office that originated or has control of the documents

☐ 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 material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm: _____.

☐ Interim response ☐ Final response

_____ _____

Signature (Senior Official) Date

FOIA Exemptions

Exemption 1: classified national defense and foreign relations information;

Exemption 2: internal agency personnel rules and practices;

Exemption 3: information that is prohibited from disclosure by another federal law;

Exemption 4: trade secrets and other confidential or privileged commercial or financial information;

Exemption 5: inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

Exemption 6: information involving matters of personal privacy;

Exemption 7: records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

Exemption 8: information relating to the supervision of financial institutions; and

Exemption 9: geological information on wells.

From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Monday, January 8, 2018 12:46 PM
To: Mark Graff - NOAA Federal
Subject: Re: FOE request 2018-000453
Attachments: 2017 12 19 Am NOAA FOIA_sea grant enviro review.pdf

Hi Mark (b)(5) [redacted].

R/
Lola

On Thu, Jan 4, 2018 at 10:48 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hey Lola--

(b)(5) [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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--
Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [redacted]
lola.m.stith@noaa.gov

December 20, 2017 *Submitted via FOIAonline*.

NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

Re: Freedom of Information Act Request for Records Relating to Sea Grant Funding Opportunity for Aquaculture

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Friends of the Earth requests all records pertaining to any environmental review, assessment, consultation, or other procedures conducted the National Oceanic and Atmospheric Administration (NOAA) pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq*., and/or the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq*., with regard to NOAA's recent announcement of the National Sea Grant College Program 2018 Ocean, Coastal and Great Lakes National Aquaculture Initiative.[1]

This request pertains specifically to any ESA Section 7 consultations, and NEPA categorical exclusion justifications, NEPA environmental assessments, and NEPA environmental impact statements, including any records related to the preparation of such documents and the documents themselves. These records should include, but not be limited to, any internal or external correspondence regarding the application of the aforementioned laws and preparation of assessments, statements, and consultations; any meetings or communications or other contact—including meeting minutes and scheduling notes—that involve the application of the aforementioned laws and preparation of assessments, statements, and consultations; as well as any findings, conclusions, recommendations, or actions taken.

For this request, the term "records" refers to, but is not limited to, correspondence of any kind, memoranda, letters, notes, schedules, electronic mail, telephone logs, minutes of meetings, work papers, reports, studies, or data.

The FOIA provides that if portions of a document are exempt from release, the remainder must nevertheless be segregated and disclosed, so please provide us with all non-exempt portions of any exempt records. 5 U.S.C. § 552(b); 7 C.F.R. § 1.15(b). Please explain any redactions by reference to specific provisions of the FOIA that allow information to be exempt from disclosure. *See* 7 C.F.R. § 1.7.

[1] NOAA recently announced federal funding opportunity for aquaculture projects on December 14, 2017, in which it has available a total of $7,000,000 to $11,500,000 across fiscal years 2018, 2019 and 2020 to support aquaculture projects in the U.S. Coastal and Great Lakes regions. This project announcement can be found at https://www.grants.gov/web/grants/view-opportunity.html?oppId=299412.

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Fee Waiver Request: As a non-profit organization, Friends of the Earth also requests a waiver of all fees incurred in providing these records. Disclosure of the requested information "is in the public interest because it is likely to contribute significantly to the public understanding of the operation 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)); 15 C.F.R. § 4.11(l) ("Records responsive to a request will be furnished without charge . . . if the requester asks for such a waiver in writing and . . . has demonstrated that [d]isclosure of the requested 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 [d]sclosure of the information is not primarily in the commercial interest of the requester." (internal punctuation marks omitted)).

Disclosure of the requested records "is likely to contribute significantly to public understanding of the operations or activities of the Government" that affect their safety, health, and environment. 15 C.F.R.§ 4.11(l)(1)(i). Friends of the Earth has over 1.5 million members and activists across the United States who place a priority on ensuring that the federal government takes proper considerations for the impacts of its actions on the environment and public health. This starts with knowing what the government is doing, and whether it has fulfilled its legal obligations to prepare NEPA documentation and ESA consultation prior to carrying out federal action. As such, these records have a high "informative value;" they will be "meaningfully informative about Government operations or activities" related to the NEPA and ESA processes, and are not "already in the public domain." *Id.* at § 4.11(l)(2)(ii).

Friends of the Earth has "expertise in the subject area [of aquaculture] and ability and intention to effectively convey information to the public." 15 C.F.R. § 4.11(l)(2)(iii). To that end, we utilize various means of communication to update its members and activists, as well as the media and general public, on government activities that may impact human health and the environment. These methods include, but certainly are not limited to, providing essential information in easy-to-read reports, a quarterly news magazine, fact sheets, press statements, public hearings and events, phone calls, letters to the editor, blogs, email alerts, and webpage updates.[2] Specifically for this request, Friends of the Earth plans to alert its members and activists as to recent government activities that legitimize and support industrial ocean fish farming activities in

[2] *See, e.g.,* Friends of the Earth, Industrial Ocean Fish Farming (last visited Dec. 19, 2017) https://foe.org/projects/industrial-ocean-fish-farming/?issue=335; Friends of the Earth, Action Alert, *Tell Governor Inslee: Protect Puget Sound from salmon net pens* (last visited Dec. 19, 2017) https://us.e-activist.com/page/3557/petition/1?ea.tracking.id=Blog; Friends of the Earth, Press Statement, *Report highlights threats of industrial ocean fish farming* (Oct. 30, 2017), https://foe.org/news/report-highlights-threats-industrial-ocean-fish-farming/; Friends of the Earth, Fact Sheet, Industrial Ocean Fish farming (2017) https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/Friends-of-the-Earth-Industrial-Ocean-Fish-Farming-Fact-Sheet.pdf; Friends of the Earth, *Concerns and Talking Points: Industrial Ocean Fish Farming* (2017) https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2017/11/Peoples-Hearing-Talking-Points.pdf; Friends of the Earth, Blog, *Industrial Ocean Fish Farming—Bad for the Ocean, Fish, and People* (Oct. 17, 2017) https://foe.org/industrial-ocean-fish-farming%E2%80%8A-%E2%80%8Abad-ocean-fish-people/; Friends of the Earth Newsmagazine, *Summer 2017: Sacrificing Public Lands for Private Profit* (Sept. 19, 2017) https://foe.org/resources/sacrificing-public-lands-private-profit/.

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federal waters. These activities have many environmental and socio-economic harms that the government is legally obligated to address before it may provide federal funding assistance. Depending on the information we receive as a result of this FOIA request, Friends of the Earth may also alert the media and the general public as to the funding assistance and levels of environmental review and consultation that were conducted in association with the program.

Friends of the Earth expects to increase its understanding of whether NOAA has fulfilled its NEPA and ESA obligations to review the provision of Sea Grant funding to certain marine aquaculture operations for potential impacts to the environment and endangered or threatened species. We are concerned that NOAA is legitimizing and supporting marine finfish aquaculture without first taking proper steps to consider the array of harms that this industry poses on the ocean ecosystem and public health. We also expect our members, activists, the general public, and the media to increase their understanding of the same.

Friends of the Earth is a not-for-profit charitable organization with no commercial interest in the information requested as defined in 15 C.F.R. §§ 4.11(b)(1). *See also id.* at § 4.11(l)(3). There is no "existence" or "magnitude" to any commercial interested associated with this request, and our "primary interest in disclosure" is simply to benefit the public interest by informing the public and other members of the media as to government activities. *Id.* at § 4.11(l)(3).. Our main purpose in requesting the documents is to increase public knowledge and participation in the government process so fundamental to the effective working of a democracy.[3]

Because of the non-profit, public interest nature of Friends of the Earth, we have extremely limited financial resources with which to cover the copying and search expenses of this request. If our request for a fee waiver is denied and any expenses associated with this request are in excess of $25.00, please obtain our approval before any such charges are incurred.

Timely Response and Request for Rolling Release: Pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I), we expect a response within ten (10) working days of your receipt of this request. If this request is denied in whole or in part, we expect a detailed justification for withholding the records. We also request any segregable portions of records that are otherwise not expected to be disclosed by NOAA in response to this request. Finally, we request that any documents responsive to this

[3] Friends of the Earth also qualifies as a "representative of the news media," and is further entitled to document search and review without charge (as well as the first 100 pages of paper copies free of charge). *See* 15 C.F.R. § 4.11(b)(6) ("Representative of the news media, or news media requester, means any person or entity organized and operated to publish or broadcast news to the public that actively 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.."). Friends of the Earth "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience." *See* 5 U.S.C. § 552(a)(4)(A)(ii); *Nat'l Security Archive v. U.S. Dep't of Defense,* 800 F.2d 1381, 1387 (D.C. Cir. 1989). Friends of the Earth has extensive and well-exercised means to keep the public informed on the operations and activities of the federal government. Friends of the Earth does not merely obtain information and then contact members of the press to relate that information; rather, we independently analyzes the information, draft our own reports and articles on the issues, and disseminate the information broadly through our own publications to our members and other interested persons. *See, e.g., supra*, note 2.

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request be released by NOAA to Friends of the Earth on a rolling basis rather than NOAA holding all of the documents for a one-time release. Friends of the Earth reserves the right to appeal any denial of this request.

If you are not the appropriate official to handle this request, please forward this letter to the appropriate person, and let us know that you have done so. Please contact me at the below email address with any questions you may have about the materials I am requesting. Thank you for your immediate attention to this matter.

Sincerely,

Hallie Templeton
Senior Oceans Campaigner
Friends of the Earth
1101 15th Street NW
Washington, DC 20001
htempleton@foe.org

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, January 9, 2018 1:10 PM
To: Shawn Puyear - NOAA Federal; bbearden@theambitgroup.com; 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; Tanya Dobrzynski - NOAA Federal
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; David Bedell - NOAA Federal; Ann Madden - NOAA Federal; Ed Kearns - NOAA Federal; Amanda Patterson - NOAA Federal
Subject: December Monthly FOIA Report
Attachments: FOIA Monthly Status Report 12-31-2017.pdf; FOIA Monthly Status Report 12-31-2017.xlsx; Judicial Watch Request Karl-Holdren.pdf; Re-Filed JW v. DOC Complaint.pdf

Good Afternoon,

The December 2017 Monthly FOIA Report is attached.

Several highlights include:

- NOAA's open request tally has swelled by 18% since the same time last year, and is at it's highest point for this time of year since 2014. Although the backlog remained relatively unchanged, an increase in case closures will be necessary to prevent the high outstanding request volume from slipping into the backlog.

- Requests regarding EO 13795-related National Monument records have continued to arrive, and are likely to create a burden for the processing staff, particularly at NOS/ONMS, as they try to field multiple broad, complex requests with a significant litigation risk.

In litigation, NOAA issued its final production release in the *Judicial Watch v. DOC* lawsuit. The original request sought communications between NOAA Scientist Tom Karl and former OSTP Director John Holdren. A copy of the original FOIA request and the Complaint are also attached.

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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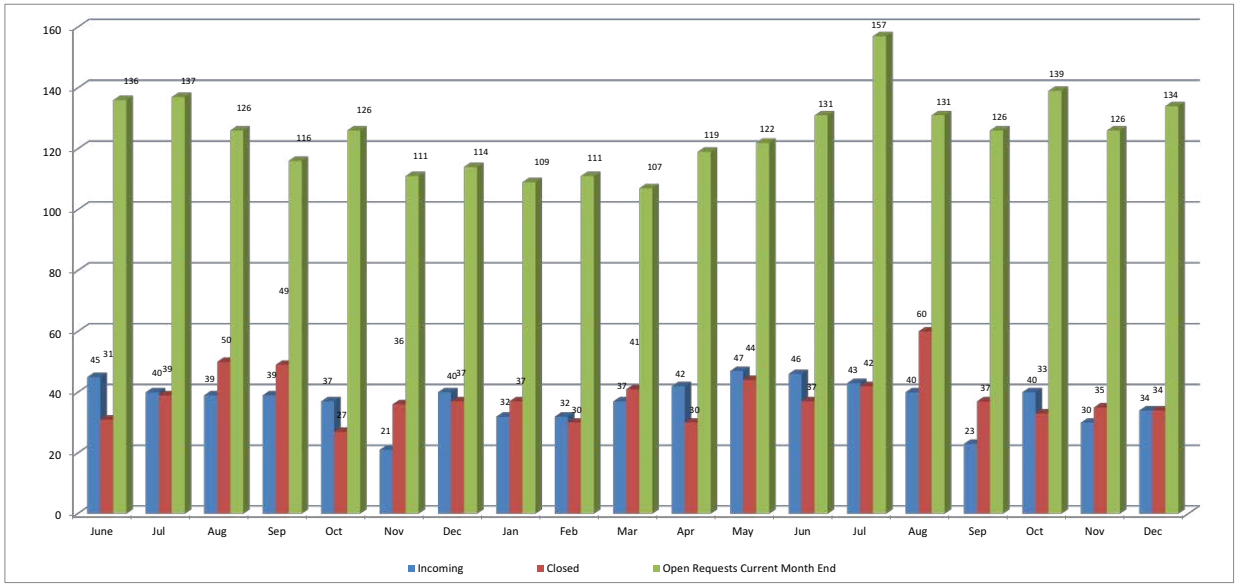
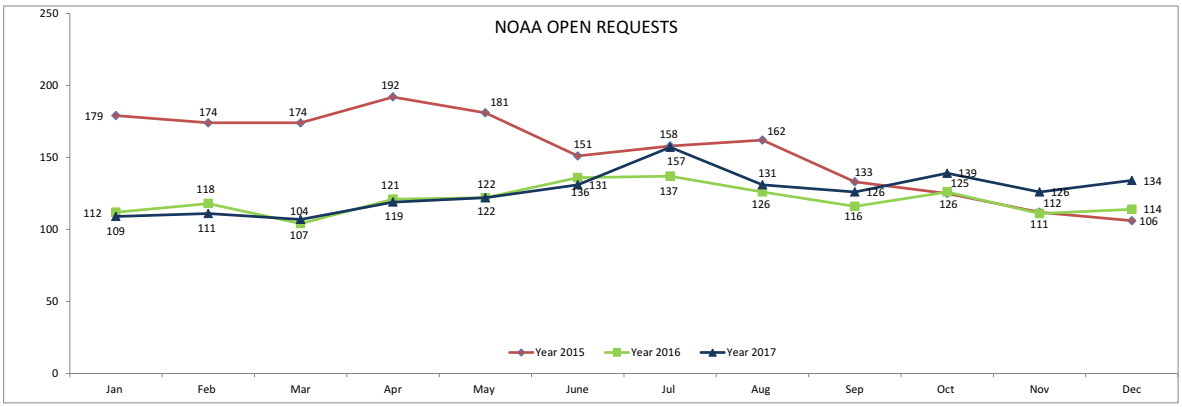
FOIA Monthly Status Report 12-31-2017

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	5	3	3	6	0	1	1	2
CAO	2	1	1	2	1	0	0	1
CFO	0	0	0	0	0	0	0	0
CIO	0	0	0	0	0	0	0	0
CIO/FOIA	2	5	3	8	2	0	0	2
GC	5	0	1	4	2	2	0	4
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	3	1	2	2	0	2	0	2
NMFS	60	17	15	67	24	14	4	42
NOS	14	2	4	10	6	0	0	6
NWS	9	1	4	6	2	1	0	3
OAR	13	2	1	14	6	2	0	8
OMAO	2	1	0	3	2	0	0	2
OC	3	0	0	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	5	0	0	6	6	0	0	6
WFMO	2	1	0	2	1	0	0	1
NOAA Totals	**126**	**34**	**34**	**134**	**56**	**22**	**5**	**83**

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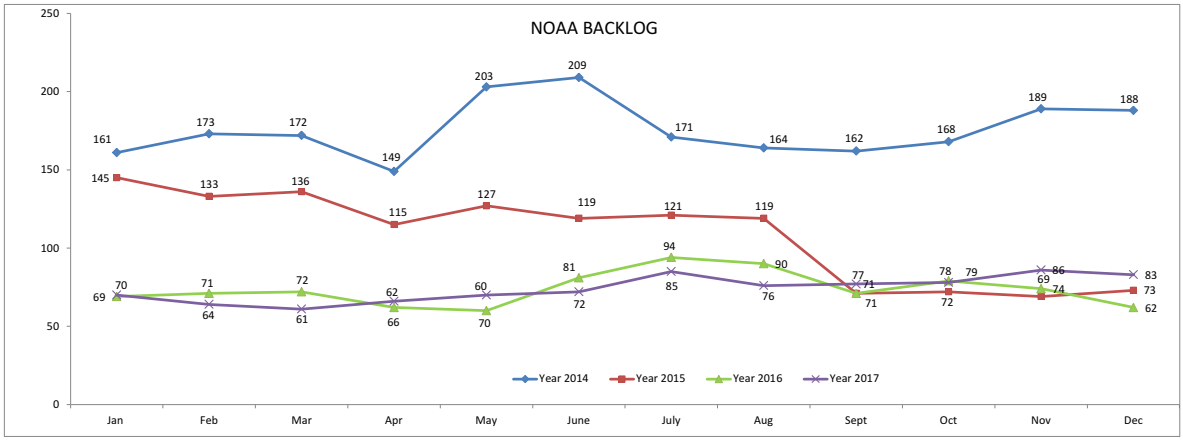
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Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
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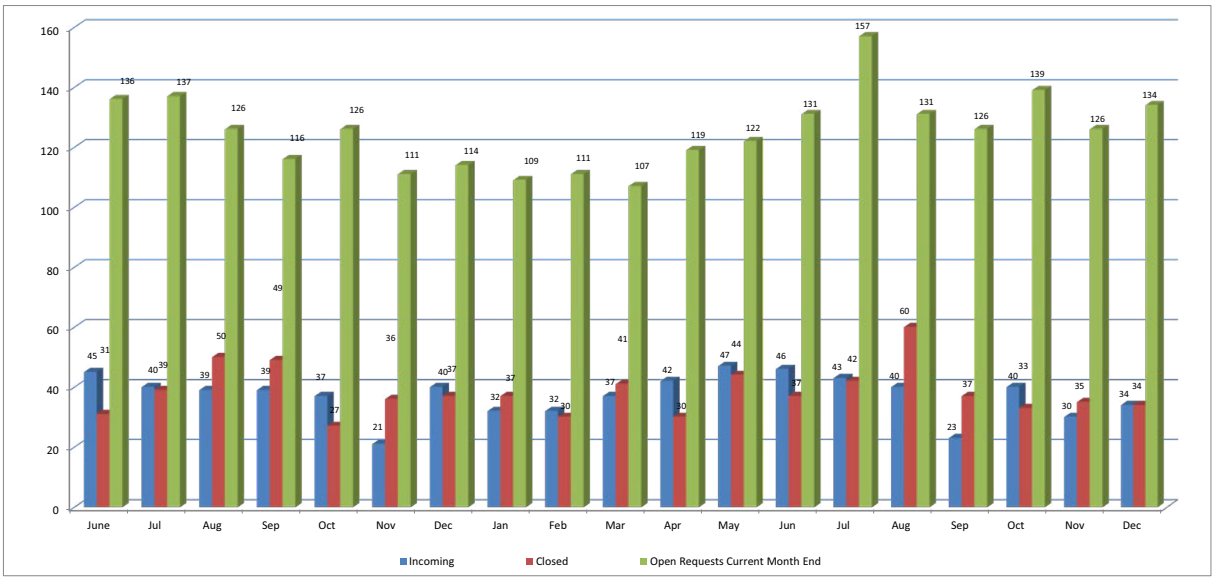
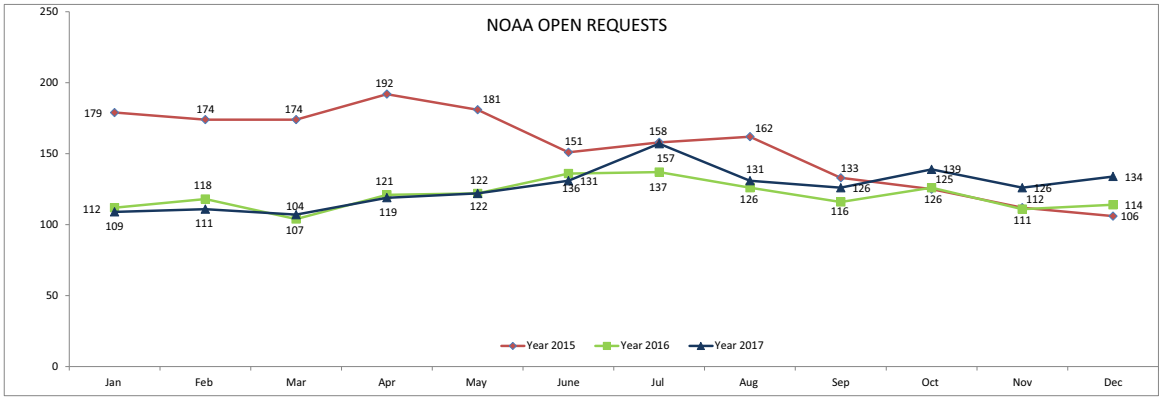
CFO	0	0	0	0	0	0	0	0
CIO	0	0	0	0	0	0	0	0
CIO/FOIA	2	5	3	8	2	0	0	2
GC	5	0	1	4	2	2	0	4
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	3	1	2	2	0	2	0	2
NMFS	60	17	15	67	24	14	4	42
NOS	14	2	4	10	6	0	0	6
NWS	9	1	4	6	2	1	0	3
OAR	13	2	1	14	6	2	0	8
OMAO	2	1	0	3	2	0	0	2
OC	3	0	0	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	5	0	0	6	6	0	0	6
WFMO	2	1	0	2	1	0	0	1
NOAA Totals	**126**	**34**	**34**	**134**	**56**	**22**	**5**	**83**

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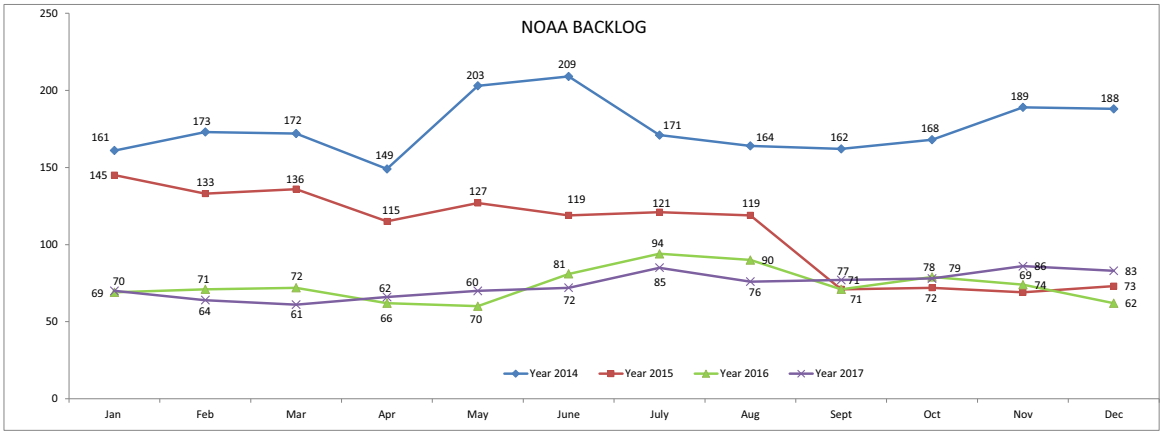
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Year 2015
Year 2016
Year 2017

Judicial Watch®
Because no one is above the law!

February 6, 2017

VIA CERTIFIED MAIL

National Oceanographic and
Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Judicial Watch, Inc. ("Judicial Watch") hereby requests that the National Oceanographic and Atmospheric Administration ("NOAA") produce the following records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"):

> Any and all records of communication between NOAA scientist Thomas Karl and Director of the Office of Science and Technology Policy John Holdren.
>
> The time frame for the requested records is January 20, 2009 through January 20, 2017.

Please determine whether to comply with this request within the time period required by FOIA and notify us immediately of your determination, the reasons therefor, and the right to appeal any adverse determination to the head of the agency or his or her designee. 5 U.S.C. § 552(a)(6)(i). Please also produce all responsive records in an electronic format ("pdf" is preferred), if convenient. We also are willing to accept a "rolling production" of responsive records if it will facilitate a more timely production.

Judicial Watch also hereby requests a waiver of both search and duplication fees. We are entitled to a waiver of search fees because we are a "representative of the news media." *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also Cause of Action v. Federal Trade Comm.*, 799 F.3d 1108 (D.C. Cir. 2015); *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381 (D.C. Cir. 1989). For more than twenty years, Judicial Watch has used FOIA and other investigative tools to gather information about the operations and activities of government, a subject of undisputed public interest. We submit over 400 FOIA requests annually. Our personnel, which includes experienced journalists and professional writers on staff and under contract, use their editorial skills to turn this raw information into

425 Third St., SW, Suite 800, Washington, DC 20024 · Tel: (202) 646-5172 or 1-888-593-8442
FAX: (202) 646-5199 · Email: info@JudicialWatch.org · www.JudicialWatch.org

distinct works that are disseminated to the public via our monthly newsletter, which has a circulation of over 300,000, weekly email update, which has over 600,000 subscribers, investigative bulletins, special reports, www.judicialwatch.org website, *Corruption Chronicles* blog, and social media, including Facebook and Twitter, among other distribution channels. We have authored several books, including *Corruption Chronicles* by Tom Fitton (Threshold Editions, July 24, 2012), and another book, *Clean House* by Tom Fitton (Threshold Editions, Aug. 30, 2016), is forthcoming. In 2012, we produced a documentary film, "District of Corruption," directed by Stephen K. Bannon. Our "news media" status has been confirmed in court rulings. *See, e.g., Judicial Watch, Inc. v. U.S. Dep't of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006); *Judicial Watch, Inc. v. U.S. Dep't of Justice,* 133 F. Supp.2d 52 (D.D.C. 2000). As a tax exempt, 501(c)(3) non-profit corporation, we have no commercial interests and do not seek the requested records for any commercial use. Rather, we intend to use the requested records as part of our on-going investigative journalism and public education efforts to promote integrity, transparency, and accountability in government and fidelity to the rule of law.

Judicial Watch also is entitled to a waiver of both search fees and duplication fees because "disclosure of the information is in the public interest." 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure of the requested records undoubtedly will shed light on "the operations or activities of the government." *Cause of Action*, 799 F.3d at 1115 (*quoting* 5 U.S.C. § 552(a)(4)(A)(iii)). Disclosure also is "likely to contribute significantly to the public understanding" of those operations or activities because, among other reasons, Judicial Watch intends to disseminate both the records and its findings to "a reasonably broad audience of persons interested in the subject" via its newsletter, email updates, investigative bulletins, website, blog, and its other, regular distribution channels. *Cause of Action*, 799 F.3d at 1116 (*quoting Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 815 (2d Cir. 1994)). Again, Judicial Watch does not seek the requested records for any commercial benefit or for its own "primary" benefit, but instead seeks them as part of its ongoing investigative journalism and public education efforts to promote integrity, transparency, and accountability in government and fidelity to the rule of law.

In the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch agrees to pay up to $300.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or bmarshall@judicialwatch.org.

Thank you for your cooperation.

Very respectfully,

William F. Marshall
Judicial Watch, Inc.

425 Third St., SW, Suite 800, Washington, DC 20024 ◦ Tel: (202) 646-5172 or 1-888-593-8442
FAX: (202) 646-5199 ◦ Email: info@JudicialWatch.org ◦ www.JudicialWatch.org

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC., 425 Third Street SW, Suite 800 Washington, DC 20024, Plaintiff, v. UNITED STATES DEPARTMENT OF COMMERCE, 1401 Constitution Avenue, NW Washington, DC 20230, Defendant.	)	Civil Action No.

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

From: postmaster@DOCGOV.onmicrosoft.com
Sent: Tuesday, January 9, 2018 1:10 PM
To: Mark.Graff@noaa.gov
Subject: Undeliverable: December Monthly FOIA Report
Attachments: details.txt; December Monthly FOIA Report

Office 365

Your message to cholmes@doc.gov couldn't be delivered.

cholmes wasn't found at doc.gov.

Mark.Graff	Office 365	cholmes
Action Required		Recipient

Unknown To address

How to Fix It

The address may be misspelled or may not exist. Try one or more of the following:

- Send the message again following these steps: In Outlook, open this non-delivery report (NDR) and choose **Send Again** from the Report ribbon. In Outlook on the web, select this NDR, then select the link "**To send this message again, click here.**" Then delete and retype the entire recipient address. If prompted with an Auto-Complete List suggestion don't select it. After typing the complete address, click **Send**.
- Contact the recipient (by phone, for example) to check that the address exists and is correct.
- The recipient may have set up email forwarding to an incorrect address. Ask them to check that any forwarding they've set up is working correctly.
- Clear the recipient Auto-Complete List in Outlook or Outlook on the web by following the steps in this article: Fix email delivery issues for error code 5.1.10 in Office 365, and then send the message again. Retype the entire recipient address before selecting **Send**.

If the problem continues, forward this message to your email admin. If you're an email admin, refer to the **More Info for Email Admins** section below.

Was this helpful? Send feedback to Microsoft.

More Info for Email Admins

Status code: 550 5.1.10

This error occurs because the sender sent a message to an email address hosted by Office 365 but the address is incorrect or doesn't exist at the destination domain. The error is reported by the recipient domain's email server, but most often it must be fixed by the person who sent the message. If the steps in the **How to Fix It** section above don't fix the problem, and you're the email admin for the recipient, try one or more of the following:

The email address exists and is correct - Confirm that the recipient address exists, is correct, and is accepting messages.

Synchronize your directories - If you have a hybrid environment and are using directory synchronization make sure the recipient's email address is synced correctly in both Office 365 and in your on-premises directory.

Errant forwarding rule - Check for forwarding rules that aren't behaving as expected. Forwarding can be set up by an admin via mail flow rules or mailbox forwarding address settings, or by the recipient via the Inbox Rules feature.

Recipient has a valid license - Make sure the recipient has an Office 365 license assigned to them. The recipient's email admin can use the Office 365 admin center to assign a license (Users > Active Users > select the recipient > Assigned License > Edit).

Mail flow settings and MX records are not correct - Misconfigured mail flow or MX record settings can cause this error. Check your Office 365 mail flow settings to make sure your domain and any mail flow connectors are set up correctly. Also, work with your domain registrar to make sure the MX records for your domain are configured correctly.

For more information and additional tips to fix this issue, see Fix email delivery issues for error code 5.1.10 in Office 365.

Original Message Details

Created Date:	1/9/2018 6:09:35 PM
Sender Address:	Mark.Graff@noaa.gov
Recipient Address:	cholmes@doc.gov
Subject:	December Monthly FOIA Report

Error Details

Reported error:	*550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient cholmes@doc.gov not found by SMTP address lookup*
DSN generated by:	BL2PR09MB0180.namprd09.prod.outlook.com

Message Hops

HOP	TIME (UTC)	FROM	TO	WITH
1	1/9/2018 6:09:35 PM		10.200.54.67	HTTP
2	1/9/2018 6:10:17 PM		mail-qt0-x241.google.com	SMTP
3	1/9/2018 6:10:18 PM	mail-qt0-x241.google.com	CY1GCC01FT006.mail.protection.outlook.com	Microsoft SMTP Server cipher=TLS_ECDHE_RSA
4	1/9/2018 6:10:18 PM	CY1GCC01FT006.eop-gcc01.prod.protection.outlook.com	CY4PR09CA0042.outlook.office365.com	Microsoft SMTP Server cipher=TLS_ECDHE_RSA
5	1/9/2018 6:10:18 PM	CY4PR09CA0042.namprd09.prod.outlook.com	BL2PR09MB0180.namprd09.prod.outlook.com	Microsoft SMTP Server cipher=TLS_ECDHE_RSA

Original Message Headers


```
Received: from CY4PR09CA0042.namprd09.prod.outlook.com (2603:10b6:903:c0::28)
 by BL2PR09MB0180.namprd09.prod.outlook.com (2a01:111:e400:c4d::26) with
 Microsoft SMTP Server (version=TLS1_2,
 cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA384_P256) id 15.20.366.8; Tue, 9 Jan
 2018 18:10:18 +0000
Received: from CY1GCC01FT006.eop-gcc01.prod.protection.outlook.com
 (2a01:111:f400:7d02::205) by CY4PR09CA0042.outlook.office365.com
 (2603:10b6:903:c0::28) with Microsoft SMTP Server (version=TLS1_2,
 cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA384) id 15.20.386.5 via Frontend
 Transport; Tue, 9 Jan 2018 18:10:18 +0000
Authentication-Results: spf=pass (sender IP is 2607:f8b0:400d:c0d::241)
 smtp.mailfrom=noaa.gov; doc.gov; dkim=pass (signature was verified)
 header.d=noaa-gov.20150623.gappssmtp.com;doc.gov; dmarc=bestguesspass
 action=none header.from=noaa.gov;
Received-SPF: Pass (protection.outlook.com: domain of noaa.gov designates
 2607:f8b0:400d:c0d::241 as permitted sender) receiver=protection.outlook.com;
 client-ip=2607:f8b0:400d:c0d::241; helo=mail-qt0-x241.google.com;
Received: from mail-qt0-x241.google.com (2607:f8b0:400d:c0d::241) by
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DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;
        d=noaa-gov.20150623.gappssmtp.com; s=20150623;
        h=mime-version:from:date:message-id:subject:to:cc;
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QjPQ==

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YI=

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Tue, 09 Jan 2018 10:10:16 -0800 (PST)

MIME-Version: 1.0

Received: by 10.200.54.67 with HTTP; Tue, 9 Jan 2018 10:09:35 -0800 (PST)

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

Date: Tue, 9 Jan 2018 13:09:35 -0500

Message-ID: <CAFHw6A_20sfFXF54gXr_Wei9ST4KEnJQUpaoyU91jo-dXF0CuQ@mail.gmail.com>

Subject: December Monthly FOIA Report

To: Shawn Puyear - NOAA Federal <shawn.puyear@noaa.gov>, bbearden@theambitgroup.com,
Devin Brakob - NOAA Federal <devin.r.brakob@noaa.gov>,
Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>, Trenika Tapscott
<trenika.tapscott@noaa.gov>,
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>,
Stephanie Altman - NOAA Federal <stephanie.altman@noaa.gov>,
Jackie Rolleri - NOAA Federal <jackie.rolleri@noaa.gov>,
Kimberly Katzenbarger - NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>,
Mike Devany - NOAA Federal <mike.devany@noaa.gov>,
Kelly Quickle - NOAA Federal <kelly.quickle@noaa.gov>,
Kelly Turner - NOAA Federal <kelly.turner@noaa.gov>,
Zachary Goldstein - NOAA Federal <zachary.goldstein@noaa.gov>,
Althea Lee - NOAA Federal <althea.lee@noaa.gov>,
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Elizabeth McLanahan - NOAA Federal <elizabeth.mclanahan@noaa.gov>,
Jerome McNamara - NOAA Federal <Jerome.McNamara@noaa.gov>,
Karen Robin - NOAA Federal <karen.robin@noaa.gov>,
Lesa Jeanpierre - NOAA Federal <lesa.jeanpierre@noaa.gov>,
Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov>,
NMFS FOIA1 - NOAA Service Account <nmfs.foia1@noaa.gov>, OMAO FOIA <omao.foia@noaa.gov>,
Tejuana Michael - NOAA Federal <Tejuana.Hickerson@noaa.gov>,
James Crocker - NOAA Federal <james.m.crocker@noaa.gov>,
Beverly Hernandez - NOAA Affiliate <beverly.hernandez@noaa.gov>,
Mary Ann Whitmeyer - NOAA Federal <mary.ann.whitmeyer@noaa.gov>,
Shem Yusuf - NOAA Federal <shem.s.yusuf@noaa.gov>, _NOAA Assistant CIOs <assistant.cios@noaa.gov>,
Gregory Raymond - NOAA Federal <gregory.raymond@noaa.gov>,
Kathryn Kempton - NOAA Federal <kathryn.kempton@noaa.gov>,
James LeDuc - NOAA Federal <james.leduc@noaa.gov>,
Velna Bullock - NOAA Federal <velna.l.bullock@noaa.gov>,
Lanetta Gray - NOAA Federal <lanetta.gray@noaa.gov>,
Corinne Brown - NOAA Federal <corinne.brown@noaa.gov>, Lisa Love - NOAA Federal <lisa.love@noaa.gov>,
Karla Burch-White - NOAA Affiliate <karla.burch-white@noaa.gov>,
Maria Williams - NOAA Federal <maria.williams@noaa.gov>,
Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>,
Bruce Gibbs - NOAA Federal <Bruce.T.Gibbs@noaa.gov>,
Roxie Allison-Holman - NOAA Federal <Roxie.Allison-Holman@noaa.gov>,
Lindsey Averill - NOAA Affiliate <lindsey.p.averill@noaa.gov>,
Steven Goodman - NOAA Federal <Steven.Goodman@noaa.gov>,
Benjamin Friedman - NOAA Federal <benjamin.friedman@noaa.gov>, "Cc: OCIO/OPPA" <ocio.ppa@noaa.gov>,
Robert Hogan <robert.j.hogan@noaa.gov>,
Symone Stone - NOAA Affiliate <symone.stone@noaa.gov>, _DUS Staff <duso.staff@noaa.gov>,
Tanya Dobrzynski - NOAA Federal <tanya.dobrzynski@noaa.gov>
CC: Mark Graff - NOAA Federal <mark.graff@noaa.gov>,
Dennis Morgan - NOAA Federal <dennis.morgan@noaa.gov>,
Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>,
Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Rodney Vieira - NOAA Federal <rod.vieira@noaa.gov>,
Jolie Harrison - NOAA Federal <jolie.harrison@noaa.gov>,
"Bogomolny, Michael (Federal)" <MBogomolny@doc.gov>,
Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>,
David Bedell - NOAA Federal <David.Bedell@noaa.gov>, Ann Madden - NOAA Federal <Ann.Madden@noaa.gov>,
Ed Kearns - NOAA Federal <ed.kearns@noaa.gov>,
Amanda Patterson - NOAA Federal <amanda.patterson@noaa.gov>
Content-Type: multipart/mixed; boundary="001a113947e6af6eb205625bd39b"
Return-Path: mark.graff@noaa.gov
X-EOPAttributedMessage: 0
X-EOPTenantAttributedMessage: 44cf3ec3-840c-4086-b7de-e3bc9a6c2db4:0

X-MS-Office365-Filtering-HT: Tenant

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X-Microsoft-Exchange-Diagnostics:
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X-Microsoft-Antispam:

UriScan:;BCL:0;PCL:0;RULEID:(205092)(4534020)(5600026)(4604075)(4605076)(4608076)(
49563074)(1401041)(1402041);SRVR:BL2PR09MB0180;

X-Microsoft-Exchange-Diagnostics:

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hwJWfBKBtvJxlhEgdXmfU0gKAvEY/7bPuvbzkoyquTg==

X-MS-TrafficTypeDiagnostic: BL2PR09MB0180:

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tue, 9 Jan 2018 13:09:35 -0500
Subject: December Monthly FOIA Report
To: Shawn Puyear - NOAA Federal <shawn.puyear@noaa.gov>, bbearden@theambitgroup.com, Devin Brakob - NOAA Federal <devin.r.brakob@noaa.gov>, Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>, Trenika Tapscott <trenika.tapscott@noaa.gov>, 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>, Stephanie Altman - NOAA Federal <stephanie.altman@noaa.gov>, Jackie Rolleri - NOAA Federal <jackie.rolleri@noaa.gov>, Kimberly Katzenbarger - NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>, Mike Devany - NOAA Federal <mike.devany@noaa.gov>, Kelly Quickle - NOAA Federal <kelly.quickle@noaa.gov>, Kelly Turner - NOAA Federal <kelly.turner@noaa.gov>, Zachary Goldstein - NOAA Federal <zachary.goldstein@noaa.gov>, Althea Lee - NOAA Federal <althea.lee@noaa.gov>, Denise Hamilton - NOAA Federal <Denise.Hamilton@noaa.gov>, Elizabeth McLanahan - NOAA Federal <elizabeth.mclanahan@noaa.gov>, Jerome McNamara - NOAA Federal <Jerome.McNamara@noaa.gov>, Karen Robin - NOAA Federal <karen.robin@noaa.gov>, Lesa Jeanpierre - NOAA Federal <lesa.jeanpierre@noaa.gov>, Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov>, NMFS FOIA1 - NOAA Service Account <nmfs.foia1@noaa.gov>, OMAO FOIA <omao.foia@noaa.gov>, Tejuana Michael - NOAA Federal <Tejuana.Hickerson@noaa.gov>, James Crocker - NOAA Federal <james.m.crocker@noaa.gov>, Beverly Hernandez - NOAA Affiliate <beverly.hernandez@noaa.gov>, Mary Ann Whitmeyer - NOAA Federal <mary.ann.whitmeyer@noaa.gov>, Shem Yusuf - NOAA Federal <shem.s.yusuf@noaa.gov>, _NOAA Assistant CIOs <assistant.cios@noaa.gov>, Gregory Raymond - NOAA Federal <gregory.raymond@noaa.gov>, Kathryn Kempton - NOAA Federal <kathryn.kempton@noaa.gov>, James LeDuc - NOAA Federal <james.leduc@noaa.gov>, Velna Bullock - NOAA Federal <velna.l.bullock@noaa.gov>, Lanetta Gray - NOAA Federal <lanetta.gray@noaa.gov>, Corinne Brown - NOAA Federal <corinne.brown@noaa.gov>, Lisa Love - NOAA Federal <lisa.love@noaa.gov>, Karla Burch-White - NOAA Affiliate <karla.burch-white@noaa.gov>, Maria Williams - NOAA Federal <maria.williams@noaa.gov>, Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>, Bruce Gibbs - NOAA Federal <Bruce.T.Gibbs@noaa.gov>, Roxie Allison-Holman - NOAA Federal <Roxie.Allison-Holman@noaa.gov>, Lindsey Averill - NOAA Affiliate <lindsey.p.averill@noaa.gov>, Steven Goodman - NOAA Federal <Steven.Goodman@noaa.gov>, Benjamin Friedman - NOAA Federal <benjamin.friedman@noaa.gov>, "Cc: OCIO/OPPA" <ocio.ppa@noaa.gov>, Robert Hogan <robert.j.hogan@noaa.gov>, Symone Stone - NOAA Affiliate <symone.stone@noaa.gov>, _DUS Staff <duso.staff@noaa.gov>, Tanya Dobrzynski - NOAA Federal <tanya.dobrzynski@noaa.gov>
Cc: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Dennis Morgan - NOAA Federal <dennis.morgan@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Rodney Vieira - NOAA Federal <rod.vieira@noaa.gov>, Jolie Harrison - NOAA Federal <jolie.harrison@noaa.gov>, "Bogomolny, Michael (Federal)" <MBogomolny@doc.gov>, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>, David Bedell - NOAA Federal <David.Bedell@noaa.gov>, Ann Madden - NOAA Federal <Ann.Madden@noaa.gov>, Ed Kearns - NOAA Federal <ed.kearns@noaa.gov>, Amanda Patterson - NOAA Federal <amanda.patterson@noaa.gov>

FOIA Monthly Status Report 12-31-2017.pdf
FOIA Monthly Status Report 12-31-2017.xlsx
Judicial Watch Request Karl-Holdren.pdf
Re-Filed JW v. DOC Complaint.pdf

Good Afternoon,

The December 2017 Monthly FOIA Report is attached.

Several highlights include:

- NOAA's open request tally has swelled by 18% since the same time last year, and is at it's highest point for this time of year since 2014. Although the backlog remained relatively unchanged, an increase in case closures will be necessary to prevent the high outstanding request volume from slipping into the backlog.

- Requests regarding EO 13795-related National Monument records have continued to arrive, and are likely to create a burden for the processing staff, particularly at NOS/ONMS, as they try to field multiple broad, complex requests with a significant litigation risk.

In litigation, NOAA issued its final production release in the *Judicial Watch v. DOC* lawsuit. The original request sought communications between NOAA Scientist Tom Karl and former OSTP Director John Holdren. A copy of the original FOIA request and the Complaint are also attached.

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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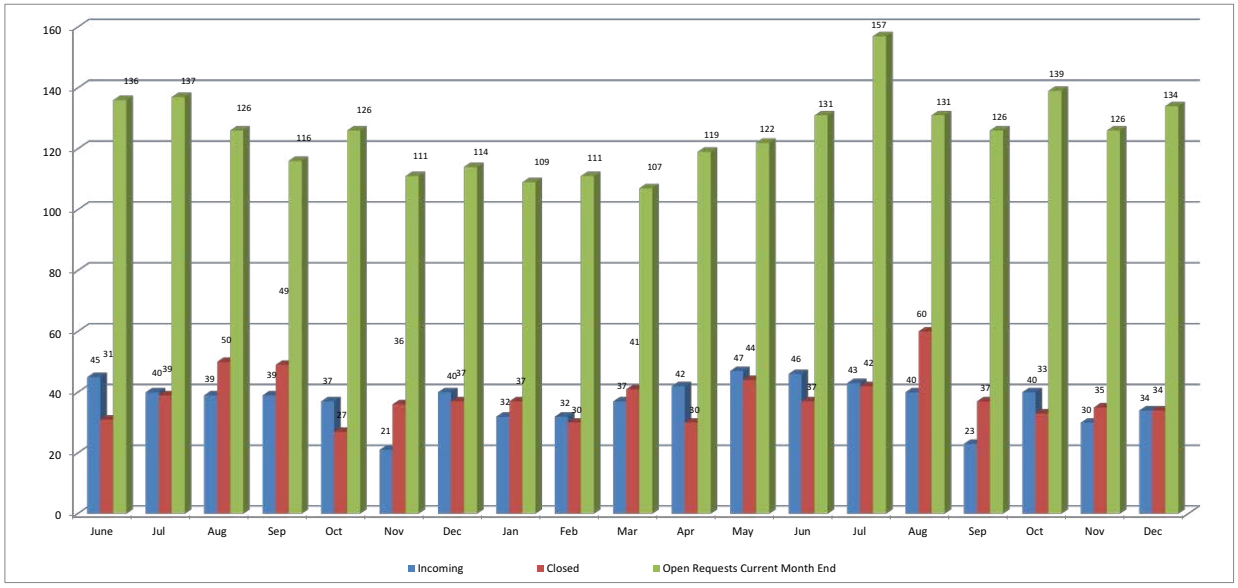
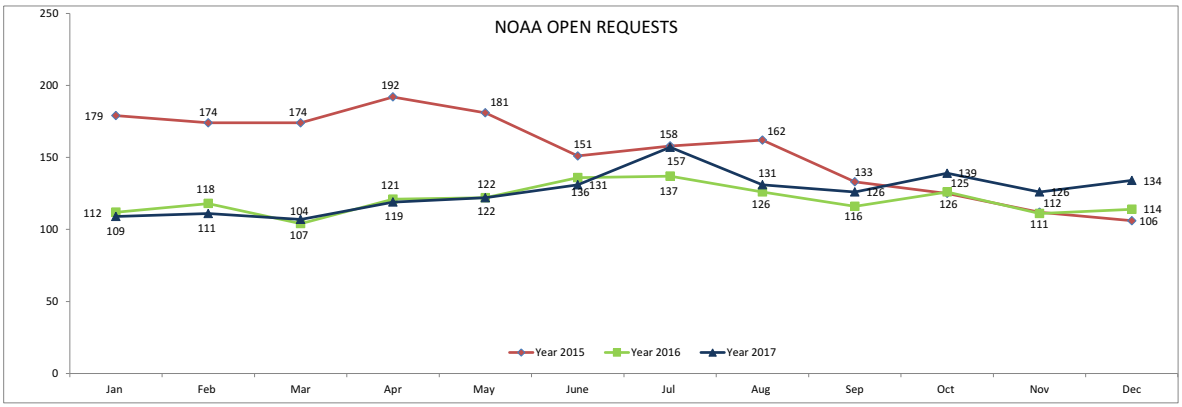
FOIA Monthly Status Report 12-31-2017

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	5	3	3	6	0	1	1	2
CAO	2	1	1	2	1	0	0	1
CFO	0	0	0	0	0	0	0	0
CIO	0	0	0	0	0	0	0	0
CIO/FOIA	2	5	3	8	2	0	0	2
GC	5	0	1	4	2	2	0	4
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	3	1	2	2	0	2	0	2
NMFS	60	17	15	67	24	14	4	42
NOS	14	2	4	10	6	0	0	6
NWS	9	1	4	6	2	1	0	3
OAR	13	2	1	14	6	2	0	8
OMAO	2	1	0	3	2	0	0	2
OC	3	0	0	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	5	0	0	6	6	0	0	6
WFMO	2	1	0	2	1	0	0	1
NOAA Totals	**126**	**34**	**34**	**134**	**56**	**22**	**5**	**83**




NOAA OPEN REQUESTS
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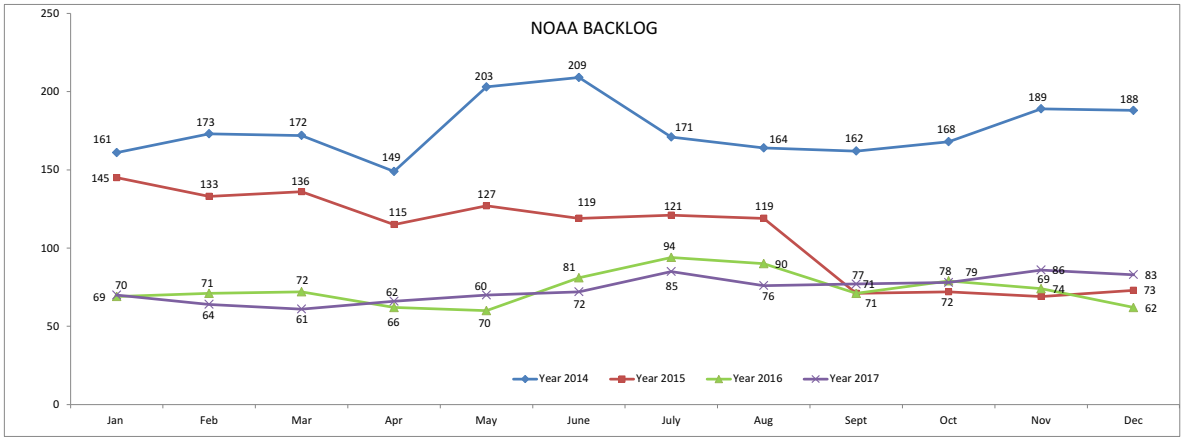
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Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
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CIO	0	0	0	0	0	0	0	0
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IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	3	1	2	2	0	2	0	2
NMFS	60	17	15	67	24	14	4	42
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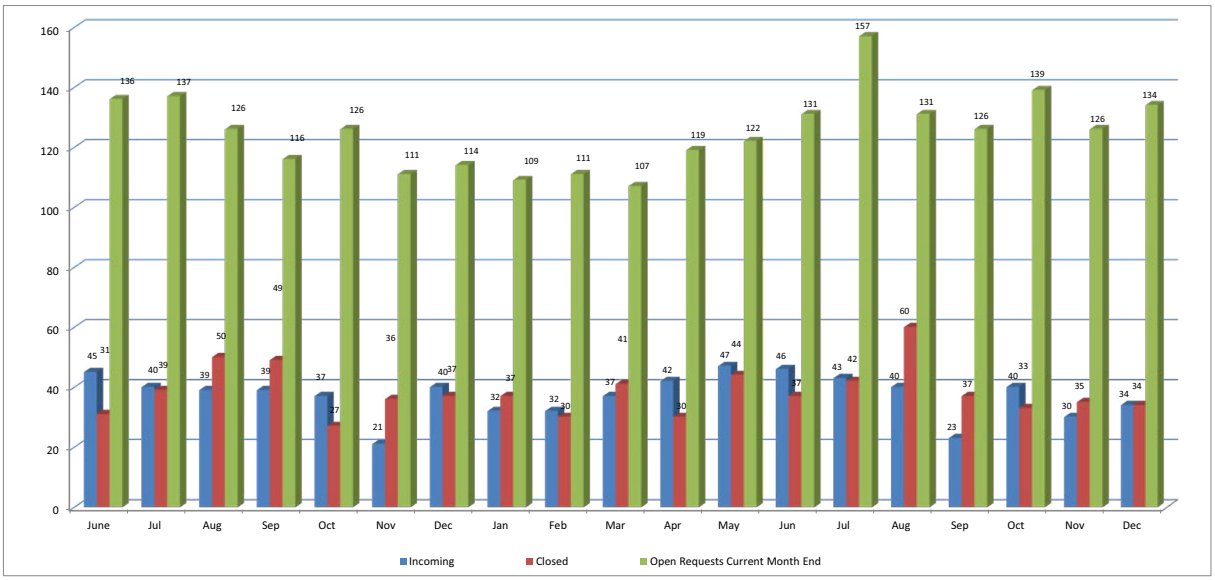
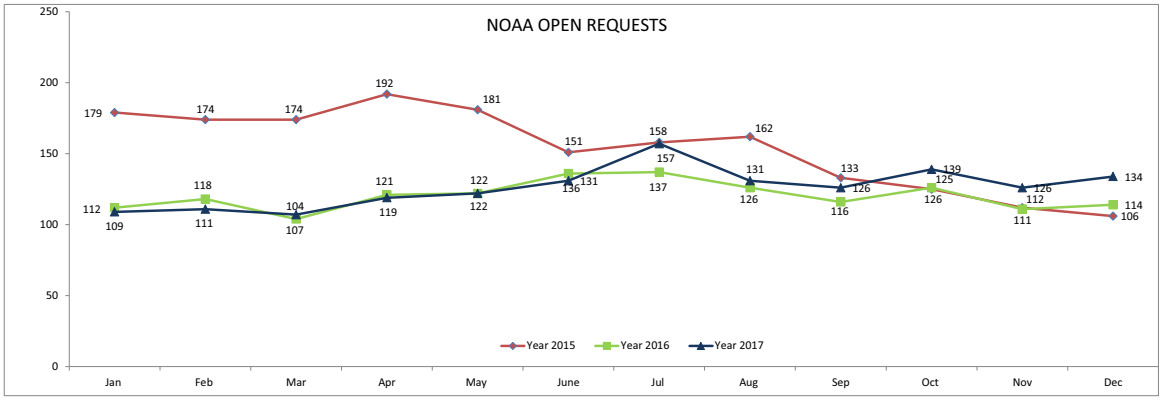
NWS	9	1	4	6	2	1	0	3
OAR	13	2	1	14	6	2	0	8
OMAO	2	1	0	3	2	0	0	2
OC	3	0	0	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USAO	5	0	0	6	6	0	0	6
WFMO	2	1	0	2	1	0	0	1
NOAA Totals	**126**	**34**	**34**	**134**	**56**	**22**	**5**	**83**

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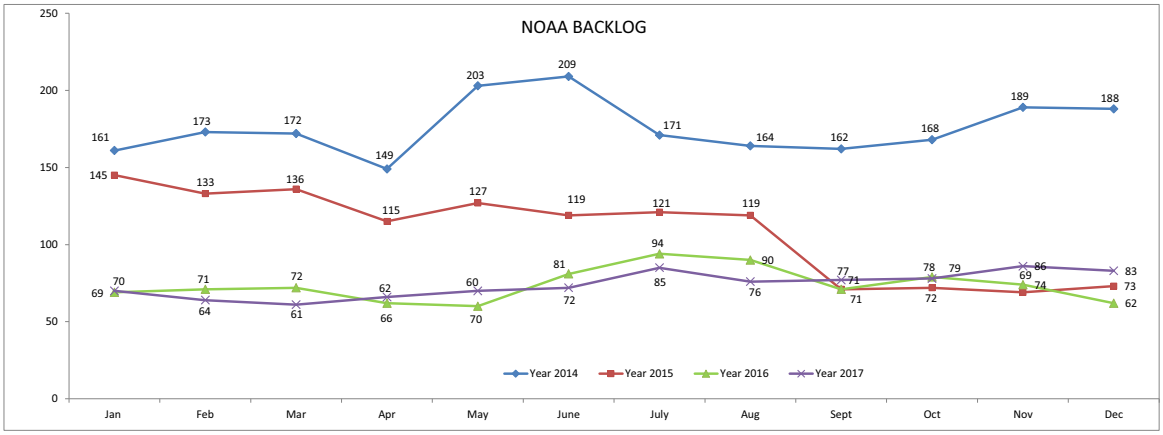
NOAA BACKLOG
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Year 2017

Judicial Watch®
Because no one is above the law!

February 6, 2017

VIA CERTIFIED MAIL

National Oceanographic and
Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Judicial Watch, Inc. ("Judicial Watch") hereby requests that the National Oceanographic and Atmospheric Administration ("NOAA") produce the following records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"):

> Any and all records of communication between NOAA scientist Thomas Karl and Director of the Office of Science and Technology Policy John Holdren.
>
> The time frame for the requested records is January 20, 2009 through January 20, 2017.

Please determine whether to comply with this request within the time period required by FOIA and notify us immediately of your determination, the reasons therefor, and the right to appeal any adverse determination to the head of the agency or his or her designee. 5 U.S.C. § 552(a)(6)(i). Please also produce all responsive records in an electronic format ("pdf" is preferred), if convenient. We also are willing to accept a "rolling production" of responsive records if it will facilitate a more timely production.

Judicial Watch also hereby requests a waiver of both search and duplication fees. We are entitled to a waiver of search fees because we are a "representative of the news media." *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also Cause of Action v. Federal Trade Comm.*, 799 F.3d 1108 (D.C. Cir. 2015); *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381 (D.C. Cir. 1989). For more than twenty years, Judicial Watch has used FOIA and other investigative tools to gather information about the operations and activities of government, a subject of undisputed public interest. We submit over 400 FOIA requests annually. Our personnel, which includes experienced journalists and professional writers on staff and under contract, use their editorial skills to turn this raw information into

425 Third St., SW, Suite 800, Washington, DC 20024 · Tel: (202) 646-5172 or 1-888-593-8442
FAX: (202) 646-5199 · Email: info@JudicialWatch.org · www.JudicialWatch.org

distinct works that are disseminated to the public via our monthly newsletter, which has a circulation of over 300,000, weekly email update, which has over 600,000 subscribers, investigative bulletins, special reports, www.judicialwatch.org website, *Corruption Chronicles* blog, and social media, including Facebook and Twitter, among other distribution channels. We have authored several books, including *Corruption Chronicles* by Tom Fitton (Threshold Editions, July 24, 2012), and another book, *Clean House* by Tom Fitton (Threshold Editions, Aug. 30, 2016), is forthcoming. In 2012, we produced a documentary film, "District of Corruption," directed by Stephen K. Bannon. Our "news media" status has been confirmed in court rulings. *See, e.g., Judicial Watch, Inc. v. U.S. Dep't of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006); *Judicial Watch, Inc. v. U.S. Dep't of Justice,* 133 F. Supp.2d 52 (D.D.C. 2000). As a tax exempt, 501(c)(3) non-profit corporation, we have no commercial interests and do not seek the requested records for any commercial use. Rather, we intend to use the requested records as part of our on-going investigative journalism and public education efforts to promote integrity, transparency, and accountability in government and fidelity to the rule of law.

Judicial Watch also is entitled to a waiver of both search fees and duplication fees because "disclosure of the information is in the public interest." 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure of the requested records undoubtedly will shed light on "the operations or activities of the government." *Cause of Action*, 799 F.3d at 1115 (*quoting* 5 U.S.C. § 552(a)(4)(A)(iii)). Disclosure also is "likely to contribute significantly to the public understanding" of those operations or activities because, among other reasons, Judicial Watch intends to disseminate both the records and its findings to "a reasonably broad audience of persons interested in the subject" via its newsletter, email updates, investigative bulletins, website, blog, and its other, regular distribution channels. *Cause of Action*, 799 F.3d at 1116 (*quoting Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 815 (2d Cir. 1994)). Again, Judicial Watch does not seek the requested records for any commercial benefit or for its own "primary" benefit, but instead seeks them as part of its ongoing investigative journalism and public education efforts to promote integrity, transparency, and accountability in government and fidelity to the rule of law.

In the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch agrees to pay up to $300.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or bmarshall@judicialwatch.org.

Thank you for your cooperation.

Very respectfully,

William F. Marshall
Judicial Watch, Inc.

425 Third St., SW, Suite 800, Washington, DC 20024 ◦ Tel: (202) 646-5172 or 1-888-593-8442
FAX: (202) 646-5199 ◦ Email: info@JudicialWatch.org ◦ www.JudicialWatch.org

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC., 425 Third Street SW, Suite 800 Washington, DC 20024, Plaintiff, v. UNITED STATES DEPARTMENT OF COMMERCE, 1401 Constitution Avenue, NW Washington, DC 20230, Defendant.	)	Civil Action No.

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

Reporting-MTA: dns;BL2PR09MB0180.namprd09.prod.outlook.com
Received-From-MTA: dns;mail-qt0-x241.google.com
Arrival-Date: Tue, 9 Jan 2018 18:10:18 +0000

Final-Recipient: rfc822;cholmes@doc.gov
Action: failed
Status: 5.1.10
Diagnostic-Code: smtp;550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient cholmes@doc.gov not found by SMTP address lookup
X-Display-Name: Holmes, Colin

From: Mary O'Brien - NOAA Federal <mary.obrien@noaa.gov>
Sent: Tuesday, January 9, 2018 3:50 PM
To: Mark Graff - NOAA Federal; Amy Sloan; Rod Vieira
Subject: Fwd: FOIA complaint
Attachments: 2018.01.08 AWI Complaint.pdf; 2018.01.08 Declaration of Donald Baur.pdf

Mark- (b)(5) [redacted]

[redacted]).

Any help you can provide would be much appreciated.
Thanks,
Mary

---------- Forwarded message ----------
From: **Baur, Don (Perkins Coie)** <DBaur@perkinscoie.com>
Date: Tue, Jan 9, 2018 at 3:24 PM
Subject: FOIA complaint
To: "Kristen Gustafson - NOAA Federal (kristen.l.gustafson@noaa.gov)" <kristen.l.gustafson@noaa.gov>, "rod.viera@noaa.gov" <rod.viera@noaa.gov>, "mary.obrien@noaa.gov" <mary.obrien@noaa.gov>

Attached is a copy of a complaint filed today under FOIA on behalf of the Animal Welfare Institute. Summons and formal filing documents will be accomplished through the usual channels.

Donald C. Baur | **Perkins Coie LLP**

700 Thirteenth Street, N.W. Suite 600

Washington, DC 20005-3960

D. +1.202.654.6234

C. +1.703.909-6119

E. DBaur@perkinscoie.com

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE 900 Pennsylvania Avenue, SE Washington, D.C. 20003, Plaintiff, v. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, 1401 Constitution Avenue, NW, Room 5128 Washington, D.C. 20230 and NATIONAL MARINE FISHERIES SERVICE, 1315 East-West Highway Silver Spring, MD 20910, Defendants.	)	Civ. No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Animal Welfare Institute brings this action against defendants National Oceanic and Atmospheric Administration and National Marine Fisheries Service for violations of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

PARTIES

2. Plaintiff Animal Welfare Institute ("AWI") is a 501(c)(3) non-profit organization that seeks to protect animals from human inflicted suffering. In particular, AWI has advocated for the protection of whales and other marine life from life from human activities such as harmful fishing practices, hunting, underwater noise production, and inhumane practices resulting from captive maintenance for purposes of public display and scientific research. AWI is the requester of the records at issue.

3. Defendant National Oceanic and Atmospheric Administration ("NOAA") is an agency of the federal government within the U.S. Department of Commerce that focuses on the conditions of the oceans and the atmosphere, including marine wildlife.

4. Defendant National Marine Fisheries Service ("NMFS") is an agency of the federal government within NOAA that has jurisdiction over whales under the Marine Mammal Protection Act ("MMPA"), 16 U.S.C. §§ 1361 - 1423h, and is in possession of the records requested by AWI.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

FACTS GIVING RISE TO PLAINTIFF'S CLAIM

A. FOIA Requirements

7. The purpose of FOIA is to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865, 869 (D.C. Cir. 2010) (quotations omitted). In enacting FOIA, Congress intended the primary objective of the Act to be the full disclosure of federal agency records so long as information is not exempted by clearly delineated statutory language. *Id.*

8. FOIA establishes a broad right of public access to federal agency records, subject only to nine delineated exemptions. 5 U.S.C. § 552(b). "Each agency, upon any request" for enumerated records must "determine within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such a request" of the "determination and the reasons therefor . . . ." *Id.* § 552(a)(6)(A)(i). A requester "shall be deemed to have exhausted [its]

administrative remedies"—and hence may file suit under the Act's citizen suit provision—"with respect to [a] request if the agency fails to comply with the . . . time limit" set forth in the statute for a substantive response. *Id.* § 552(a)(6)(C)(i).

9. The federal regulations implementing FOIA for NOAA and NMFS are located at 15 C.F.R. § 4.1, *et seq*. 15 C.F.R. § 4.6 codifies the requirement that NOAA/NMFS respond within 20 working days of receiving a FOIA request with a determination of compliance.

B. The Public Interest Need for the Documents Subject to the FOIA Request

10. In 2013, the documentary film *Blackfish* drew public attention to the plight of Tilikum, an orca held in captivity by SeaWorld Parks & Entertainment ("SeaWorld"), and other orcas now maintained in aquariums and theme parks around the world. *Blackfish* set off a strong negative public reaction to SeaWorld and the conditions under which orcas are held in captivity.

11. On March 8, 2016, SeaWorld released a video on its website describing Tilikum's declining health and indicating that he was not expected to survive.

12. Beginning in October 2016, the People for the Ethical Treatment of Animals ("PETA") initiated the first of what would be several meetings and communications with NOAA/NMFS regarding Tilikum. AWI joined this effort by December 2016. In anticipation of Tilikum's death, NOAA/NMFS was presented with a draft legal opinion explaining why the 1992 MMPA permit authorizing the importation of Tilikum requires SeaWorld to submit to NOAA/NMFS the necropsy report and clinical history for Tilikum in the event of his death. In these meetings and communications, and through the draft legal opinion, AWI (with PETA) sought NOAA/NMFS input and comments on the applicability of the necropsy and clinical history permit requirement.

13. In the following months, AWI also presented its views on the necropsy and clinical history requirements of MMPA permits to the other federal agencies with jurisdiction over marine mammals ─ the U.S. Fish and Wildlife Service ("FWS"), the Marine Mammal Commission ("MMC"), and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS").[1]

14. In these agency meetings and communications, AWI repeatedly stressed the importance of necropsy reports and clinical histories for purposes of scientific research, medical care (including for free-ranging, stranded individuals), animal husbandry, and public education, and demonstrated that the benefits resulting from this information applied to whales held both in captivity and in the wild.

15. In these meetings and communications, NOAA/NMFS never took a position on whether SeaWorld had to comply with the necropsy and clinical history requirements of Tilikum's permit.

16. Tilikum died on January 6, 2017 at SeaWorld's Orlando facility. AWI and other animal welfare organizations immediately notified NOAA/NMFS that Tilikum's MMPA permit required SeaWorld to submit the necropsy and clinical history report within 30 days. Based on information and belief, SeaWorld never submitted the necropsy and clinical history report required by the permit to NOAA/NMFS.

17. On March 10, 2017, NOAA/NMFS responded to the animal welfare organizations' notice with an email stating that it was willing to meet to discuss the issue but that it had concluded that the necropsy and clinical history provisions of Tilikum's permit had been

[1] Under the MMPA, NOAA/NMFS has jurisdiction over whales, dolphins and seals. FWS has jurisdiction over polar bears, manatees, walrus and sea otters. 16 U.S.C. § 1362(12)(A). The MMC serves in an independent advisory and oversight role. *Id.* §§ 1401-1407. APHIS jurisdiction is not under the MMPA but applies to marine mammals in certain captive maintenance facilities under the Animal Welfare Act. 7 U.S.C. §§ 2131-2159.

extinguished by amendments to the MMPA in 1994 and that "the legal analysis supporting this determination is exempt from disclosure under the attorney-client privilege, and we will not be discussing it in any detail at the meeting." Thus, after months of effort to engage NOAA/NMFS in a collaborative dialogue regarding the permit requirements for SeaWorld to release Tilikum's health records, AWI and the other organizations had no explanation from NOAA/NMFS for the legal conclusion, contrary to the plain language of the permit, that the necropsy and clinical history requirement did not apply and were told that none would be provided.

18. AWI contacted SeaWorld directly by email on March 25, 2017 asking for voluntary release of Tilikum's records. SeaWorld refused to do so in an April 13, 2017 email. Five animal welfare organizations sent a letter to SeaWorld on August 8, 2017, again asking for voluntary compliance. SeaWorld has not replied and continues to withhold the documents.

19. On July 24, 2017, Tilikum's granddaughter Kyara died at SeaWorld's San Antonio facility. The draft legal opinion previously provided to NOAA/NMFS confirmed that Kyara was covered by the necropsy and clinical history provision of Tilikum's permit.

20. On July 31, 2017, AWI and other animal welfare organizations wrote to NOAA/NMFS asking for enforcement of the necropsy and clinical history provision of Tilikum's permit for Kyara's records. Counsel to AWI submitted a revised version of the draft legal opinion supporting this conclusion to NOAA/NMFS on August 14, 2017.

21. NOAA/NMFS responded on September 7, 2017, simply restating its March 10, 2017 email message that the permit had been extinguished by the 1994 MMPA amendments.

22. On August 15, 2017, Kasatka, an orca held at SeaWorld's San Diego facility, was euthanized due to a bacterial infection. Kasatka's 1978 MMPA permit included a necropsy and clinical history requirement. AWI, and the other organizations promptly requested

NOAA/NMFS to enforce the permit, by letter dated August 25, 2017, and by an updated version of the legal opinion, by letter from counsel dated August 30, 2017.

23. By letter dated October 18, 2017, NOAA/NMFS issued the same response as in its March 10, 2017 email on Tilikum's death and its September 7, 2017 letter on Kyara's death, stating that the necropsy and clinical history requirement in Kasatka's permit had been extinguished. Again, NOAA/NMFS provided no explanation for its legal conclusion.

24. After the death of three SeaWorld orcas over a seven-month period, NOAA/NMFS has refused to release or disclose the legal rationale for its conclusion that SeaWorld can ignore clearly stated permit requirements and withhold information that would shed light on the cause of death and medical condition of these whales during their lives in captivity and benefit science and marine mammal husbandry, stranding response, and medical care. SeaWorld refuses to release the whales' clinical histories or necropsy reports.

C. The AWI FOIA Request

25. By letters sent by email on September 29, 2017, AWI submitted FOIA requests to NOAA/NMFS, FWS, and MMC for all documents from January 1, 2017 to May 1, 2017 regarding NMFS' March 10, 2017 determination that the necropsy and clinical history requirements of Public Display Permit No. 774 for Tilikum were extinguished by the 1994 MMPA amendments. Exhibit 1, Declaration of Donald C. Baur, dated January 8, 2018 ("Baur Decl.") at ¶ 2, Attachment A. On the same date, AWI submitted a FOIA request to APHIS, asking for "all requests that APHIS has submitted since January 1, 1994 under 9 C.F.R. § 3.110(g) requesting necropsy records for marine mammals that have died in captivity, and all necropsy records that APHIS has received in response to those requests."

26. Under FOIA, the deadline for agency response to the requests was October 30, 2017.

27. By letter to AWI dated October 5, 2017, APHIS's FOIA Director confirmed receipt of the FOIA request. The letter identified an anticipated response date of October 30, 2017. On December 8, 2017, APHIS responded to AWI's FOIA request.[2]

28. By voice message on October 4, 2017, the MMC confirmed receipt of AWI's FOIA request. In a letter sent by email, dated December 18, 2017, Michael L. Gosliner, MMC General Counsel, responded to the FOIA request with a partial release of documents. In the MMC response letter, Mr. Gosliner stated:

> I am sympathetic to the position that your organization finds itself in — the responsible agency (NMFS) has given you its legal conclusion that the 1994 amendments to the MMPA extinguished the permit terms and conditions related to necropsies and clinical histories, but has declined to provide you with its rationale for this conclusion. I can see where that agency would not want to share its draft legal analysis outside of the government, but once a conclusion has been reached, its final position no longer is pre-decisional.[3]

The MMC also stated that it could not release its own documents that would shed light on the NOAA/NMFS legal position without concurrence from NOAA/NMFS.[4]

---

[2] APHIS confirmed that, since 1994, it has not required licensees to submit necropsy reports for any marine mammals. As a result, it had no documents to release.

[3] The MMC's FOIA response indicates that NOAA/NMFS had not completed its consultation with its sister agencies on the legal question at the time it announced its conclusion on March 10, 2017.

[4] The MMC request revealed the limited nature of the AWI request, by identifying only nine responsive documents withheld based on the NOAA/NMFS position. The MMC letter also confirmed that it had coordinated its response "with the other agencies," indicating that NOAA/NMFS is aware of the FOIA request.

29. By email on September 29, 2017, FWS's Headquarters FOIA Office acknowledged receipt of the FOIA request. The email stated that the request was forwarded to the Division of Management Authority for processing.

30. The initial FOIA request letter to NMFS was confirmed delivered to NOAA/NMFS by AWI email on September 29, 2017. A follow-up letter was also sent by email to NMFS on December 4, 2017, asking for a response by December 15, 2017. Baur Decl. ¶ 3, Attachment B. Finally, on December 22, 2017, a copy of the December 4 letter was sent again by email, with a specific request that NMFS acknowledge receipt. *Id.* ¶ 4, Attachment C.

31. As of the date of this complaint, NOAA/NMFS has never even acknowledged receipt of the September 29, 2017 request, the December 4, 2017 follow-up letter, or the December 22, 2017 email confirmation request.

32. To date, more than three months after AWI's initial letter, and more than two months after the statutory deadline, NOAA/NMFS has not responded in any way to the September 29, 2017 AWI FOIA request. Nor has the Agency provided AWI with any explanation for the ongoing delay. The other agencies have either responded in full (APHIS and MMC) or acknowledged receipt and confirmed that review is underway (FWS).

CLAIM FOR RELIEF

33. AWI has a statutory right to the requested records. NOAA/NMFS, in violation of FOIA and AWI's rights under FOIA, has failed to provide the records, or any substantive determination regarding them, by the mandatory deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

REQUESTED RELIEF

34. AWI respectfully requests that the Court grant the following relief:

a. Declare that NMFS is in violation of FOIA;

b. Enjoin NMFS from continuing to withhold the requested records and order NMFS immediately to release the records in full to AWI;

c. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F)(i) that the "circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding . . . .";

d. Award Plaintiff its attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);

e. Award any other relief this Court finds just and proper.

Dated this 9th day of January, 2018

Respectfully submitted,

/s/Donald C. Baur

Donald C. Baur
D.C. Bar No. 393621
Perkins Coie LLP
700 13th Street, NW, Suite 600
Washington, D.C. 20005-3960
(202) 654-6200
DBaur@perkinscoie.com

Sunny Tsou
(*pro hac vice* application pending)
Perkins Coie LLP
505 Howard Street
Suite 1000
San Francisco, CA 94105
(415) 344-7000
STsou@perkinscoie.com

Counsel for Plaintiff

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE,	)	
	)	
Plaintiff,	)	
v.	)	Civ. No.
	)	
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF DONALD C. BAUR

I, DONALD C. BAUR, declare as follows:

1. I am an attorney duly licensed to practice law in the District of Columbia. I am a partner of the law firm of Perkins Coie LLP in Washington, D.C. and attorney of record for the Animal Welfare Institute. I am familiar with the matter set forth herein and if called as a witness, I could and would competently testify thereto.

2. Attached as Attachment A is a true and correct copy of a Freedom of Information Act (FOIA) request letter from the Animal Welfare Institute (AWI) to the National Oceanic and Atmospheric Administration (NOAA), U.S. Fish and Wildlife Service (FWS) and the Marine Mammal Commission (MMC), dated September 29, 2017, and transmittal email from Georgia Hancock, AWI, to NOAA (foia@noaa.gov), FWS (fwhq_foia@fws.gov), and MMC (mmc@mmc.gov), dated September 29, 2017.

3. Attached as Attachment B is a true and correct copy of a "follow-up" letter from AWI to NOAA, regarding "Freedom of Information Act Request," dated December 4, 2017, and

transmittal email from Sheri Pais, Perkins Coie, to NOAA (foia@noaa.gov), dated December 4, 2017.

4. Attached as Attachment C is a true and correct copy of an email from Sheri Pais, Perkins Coie, to NOAA (foia@noaa.gov), regarding "AWI Freedom of Information Act Request Follow Up Letter," dated December 22, 2017, and attaching the December 4, 2017 follow up letter.

Executed within the United States this 8th day of January, 2018

Donald C. Baur

Donald C. Baur

Attachment A

From:	Georgia Hancock
To:	FOIA@noaa.gov; fwhq_foia@fws.gov; mmc@mmc.gov
Cc:	Baur, Don (WDC); Naomi Rose
Subject:	AWI FOIA to NOAA, FWS, MMC 9-29-2017
Attachments:	NOAA NMFS FWS MMC FOIA 9.29.17.pdf

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock
Of Counsel
georgia@awionline.org
mobile: 607-329-8638
Animal Welfare Institute
Visit us at awionline.org

Animal Welfare Institute

9903 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

September 29, 2017

VIA OVERNIGHT MAIL AND EMAIL

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

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Michael Gosliner
Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, Maryland 20814
mmc@mmc.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

Attachment B

From:	Pais, Sheri (WDC)
To:	"FOIA@noaa.gov"
Cc:	Georgia Hancock (georgia@awionline.org); Naomi Rose (naomi@awionline.org); Baur, Don (Perkins Coie)
Subject:	AWI Freedom of Information Act Request Follow Up Letter
Date:	Monday, December 04, 2017 8:38:00 AM
Attachments:	2017.12.04 AWI Letter to NOAA NMFS re Sept 29 2017 FOIA Request.pdf

---

NOAA FOIA Officer –

Attached please find the Dec. 4 letter from the Animal Welfare Institute (AWI) pertaining to its September 29, 2017 FOIA Request.

Thank you,

Sheri Pais

Sheri Pais | Perkins Coie LLP
SENIOR PARALEGAL
700 Thirteenth Street, N.W. Suite 600
Washington, DC 20005-3960
D. +1.202.654.1735
F. +1.202.654.6211
E. SPais@perkinscoie.com

Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

December 4, 2017

VIA OVERNIGHT MAIL AND EMAIL

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of the Interior, 43 C.F.R., Part 2, I am writing on behalf of the Animal Welfare Institute ("AWI") to follow up with regard to the September 29, 2017 request submitted to the Fish and Wildlife Service ("FWS") pertaining to certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for the male orca Tilikum (Permit No. 774).

AWI requested all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

While AWI received an acknowledgment of its request from headquarters on the submittal date of September 29, to date AWI has not received a formal acknowledgment from the Division of Management Authority (DMA), the division to which the request was forwarded for processing, nor has AWI received a response to its FOIA request. AWI should not need to remind the agency of its obligation to respond to AWI's FOIA request within twenty work days. As the agency has allowed that time period to elapse, AWI is prepared to exercise the legal options available to it under FOIA if we do not receive a complete response to our request by December 15, 2017.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

Attachment C

From:	Pais, Sheri (WDC)
To:	"foia@noaa.gov"
Bcc:	Baur, Don (Perkins Coie)
Subject:	FW: AWI Freedom of Information Act Request Follow Up Letter
Date:	Friday, December 22, 2017 11:06:00 AM
Attachments:	2017.12.04 AWI Letter to NOAA NMFS re Sept 29 2017 FOIA Request.pdf

---

Good morning—

Please confirm receipt.

Thank you.

Sheri Pais | **Perkins Coie LLP**
SENIOR PARALEGAL
700 Thirteenth Street, N.W. Suite 600
Washington, DC 20005-3960
D. +1.202.654.1735
F. +1.202.654.6211
E. SPais@perkinscoie.com

From: Pais, Sheri (WDC)
Sent: Monday, December 04, 2017 8:39 AM
To: 'FOIA@noaa.gov'
Cc: Georgia Hancock (georgia@awionline.org); Naomi Rose (naomi@awionline.org); Baur, Don (Perkins Coie)
Subject: AWI Freedom of Information Act Request Follow Up Letter

NOAA FOIA Officer –

Attached please find the Dec. 4 letter from the Animal Welfare Institute (AWI) pertaining to its September 29, 2017 FOIA Request.

Thank you,

Sheri Pais

Sheri Pais | **Perkins Coie LLP**
SENIOR PARALEGAL
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Animal Welfare Institute

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awionline.org phone (202) 337-2332 fax (202) 446-2131

December 4, 2017

VIA OVERNIGHT MAIL AND EMAIL

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of the Interior, 43 C.F.R., Part 2, I am writing on behalf of the Animal Welfare Institute ("AWI") to follow up with regard to the September 29, 2017 request submitted to the Fish and Wildlife Service ("FWS") pertaining to certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for the male orca Tilikum (Permit No. 774).

AWI requested all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

While AWI received an acknowledgment of its request from headquarters on the submittal date of September 29, to date AWI has not received a formal acknowledgment from the Division of Management Authority (DMA), the division to which the request was forwarded for processing, nor has AWI received a response to its FOIA request. AWI should not need to remind the agency of its obligation to respond to AWI's FOIA request within twenty work days. As the agency has allowed that time period to elapse, AWI is prepared to exercise the legal options available to it under FOIA if we do not receive a complete response to our request by December 15, 2017.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, January 9, 2018 4:23 PM
To: Lola Stith - NOAA Affiliate
Subject: Fwd: FOIA complaint
Attachments: 2018.01.08 AWI Complaint.pdf; 2018.01.08 Declaration of Donald Baur.pdf

Hey Lola--

This is the one we just talked about. Do we have a request number for this one?

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

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

---------- Forwarded message ----------
From: **Mary O'Brien - NOAA Federal** <mary.obrien@noaa.gov>
Date: Tue, Jan 9, 2018 at 3:50 PM
Subject: Fwd: FOIA complaint
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Amy Sloan <amy.sloan@noaa.gov>, Rod Vieira <rod.vieira@noaa.gov>

Mark- (b)(5) [redacted]

[redacted]).

Any help you can provide would be much appreciated.
Thanks,
Mary

---------- Forwarded message ----------
From: **Baur, Don (Perkins Coie)** <DBaur@perkinscoie.com>
Date: Tue, Jan 9, 2018 at 3:24 PM
Subject: FOIA complaint
To: "Kristen Gustafson - NOAA Federal (kristen.l.gustafson@noaa.gov)" <kristen.l.gustafson@noaa.gov>,

"rod.viera@noaa.gov" <rod.viera@noaa.gov>, "mary.obrien@noaa.gov" <mary.obrien@noaa.gov>

Attached is a copy of a complaint filed today under FOIA on behalf of the Animal Welfare Institute. Summons and formal filing documents will be accomplished through the usual channels.

Donald C. Baur | **Perkins Coie LLP**

700 Thirteenth Street, N.W. Suite 600

Washington, DC 20005-3960

D. +1.202.654.6234

C. +1.703.909-6119

E. DBaur@perkinscoie.com

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE 900 Pennsylvania Avenue, SE Washington, D.C. 20003, Plaintiff, v. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, 1401 Constitution Avenue, NW, Room 5128 Washington, D.C. 20230 and NATIONAL MARINE FISHERIES SERVICE, 1315 East-West Highway Silver Spring, MD 20910, Defendants.	)	Civ. No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Animal Welfare Institute brings this action against defendants National Oceanic and Atmospheric Administration and National Marine Fisheries Service for violations of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

PARTIES

2. Plaintiff Animal Welfare Institute ("AWI") is a 501(c)(3) non-profit organization that seeks to protect animals from human inflicted suffering. In particular, AWI has advocated for the protection of whales and other marine life from life from human activities such as harmful fishing practices, hunting, underwater noise production, and inhumane practices resulting from captive maintenance for purposes of public display and scientific research. AWI is the requester of the records at issue.

3. Defendant National Oceanic and Atmospheric Administration ("NOAA") is an agency of the federal government within the U.S. Department of Commerce that focuses on the conditions of the oceans and the atmosphere, including marine wildlife.

4. Defendant National Marine Fisheries Service ("NMFS") is an agency of the federal government within NOAA that has jurisdiction over whales under the Marine Mammal Protection Act ("MMPA"), 16 U.S.C. §§ 1361 - 1423h, and is in possession of the records requested by AWI.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

FACTS GIVING RISE TO PLAINTIFF'S CLAIM

A. FOIA Requirements

7. The purpose of FOIA is to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865, 869 (D.C. Cir. 2010) (quotations omitted). In enacting FOIA, Congress intended the primary objective of the Act to be the full disclosure of federal agency records so long as information is not exempted by clearly delineated statutory language. *Id.*

8. FOIA establishes a broad right of public access to federal agency records, subject only to nine delineated exemptions. 5 U.S.C. § 552(b). "Each agency, upon any request" for enumerated records must "determine within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such a request" of the "determination and the reasons therefor . . . ." *Id.* § 552(a)(6)(A)(i). A requester "shall be deemed to have exhausted [its]

administrative remedies"—and hence may file suit under the Act's citizen suit provision—"with respect to [a] request if the agency fails to comply with the . . . time limit" set forth in the statute for a substantive response. *Id.* § 552(a)(6)(C)(i).

9. The federal regulations implementing FOIA for NOAA and NMFS are located at 15 C.F.R. § 4.1, *et seq*. 15 C.F.R. § 4.6 codifies the requirement that NOAA/NMFS respond within 20 working days of receiving a FOIA request with a determination of compliance.

B. The Public Interest Need for the Documents Subject to the FOIA Request

10. In 2013, the documentary film *Blackfish* drew public attention to the plight of Tilikum, an orca held in captivity by SeaWorld Parks & Entertainment ("SeaWorld"), and other orcas now maintained in aquariums and theme parks around the world. *Blackfish* set off a strong negative public reaction to SeaWorld and the conditions under which orcas are held in captivity.

11. On March 8, 2016, SeaWorld released a video on its website describing Tilikum's declining health and indicating that he was not expected to survive.

12. Beginning in October 2016, the People for the Ethical Treatment of Animals ("PETA") initiated the first of what would be several meetings and communications with NOAA/NMFS regarding Tilikum. AWI joined this effort by December 2016. In anticipation of Tilikum's death, NOAA/NMFS was presented with a draft legal opinion explaining why the 1992 MMPA permit authorizing the importation of Tilikum requires SeaWorld to submit to NOAA/NMFS the necropsy report and clinical history for Tilikum in the event of his death. In these meetings and communications, and through the draft legal opinion, AWI (with PETA) sought NOAA/NMFS input and comments on the applicability of the necropsy and clinical history permit requirement.

13. In the following months, AWI also presented its views on the necropsy and clinical history requirements of MMPA permits to the other federal agencies with jurisdiction over marine mammals ─ the U.S. Fish and Wildlife Service ("FWS"), the Marine Mammal Commission ("MMC"), and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS").[1]

14. In these agency meetings and communications, AWI repeatedly stressed the importance of necropsy reports and clinical histories for purposes of scientific research, medical care (including for free-ranging, stranded individuals), animal husbandry, and public education, and demonstrated that the benefits resulting from this information applied to whales held both in captivity and in the wild.

15. In these meetings and communications, NOAA/NMFS never took a position on whether SeaWorld had to comply with the necropsy and clinical history requirements of Tilikum's permit.

16. Tilikum died on January 6, 2017 at SeaWorld's Orlando facility. AWI and other animal welfare organizations immediately notified NOAA/NMFS that Tilikum's MMPA permit required SeaWorld to submit the necropsy and clinical history report within 30 days. Based on information and belief, SeaWorld never submitted the necropsy and clinical history report required by the permit to NOAA/NMFS.

17. On March 10, 2017, NOAA/NMFS responded to the animal welfare organizations' notice with an email stating that it was willing to meet to discuss the issue but that it had concluded that the necropsy and clinical history provisions of Tilikum's permit had been

[1] Under the MMPA, NOAA/NMFS has jurisdiction over whales, dolphins and seals. FWS has jurisdiction over polar bears, manatees, walrus and sea otters. 16 U.S.C. § 1362(12)(A). The MMC serves in an independent advisory and oversight role. *Id.* §§ 1401-1407. APHIS jurisdiction is not under the MMPA but applies to marine mammals in certain captive maintenance facilities under the Animal Welfare Act. 7 U.S.C. §§ 2131-2159.

extinguished by amendments to the MMPA in 1994 and that "the legal analysis supporting this determination is exempt from disclosure under the attorney-client privilege, and we will not be discussing it in any detail at the meeting." Thus, after months of effort to engage NOAA/NMFS in a collaborative dialogue regarding the permit requirements for SeaWorld to release Tilikum's health records, AWI and the other organizations had no explanation from NOAA/NMFS for the legal conclusion, contrary to the plain language of the permit, that the necropsy and clinical history requirement did not apply and were told that none would be provided.

18. AWI contacted SeaWorld directly by email on March 25, 2017 asking for voluntary release of Tilikum's records. SeaWorld refused to do so in an April 13, 2017 email. Five animal welfare organizations sent a letter to SeaWorld on August 8, 2017, again asking for voluntary compliance. SeaWorld has not replied and continues to withhold the documents.

19. On July 24, 2017, Tilikum's granddaughter Kyara died at SeaWorld's San Antonio facility. The draft legal opinion previously provided to NOAA/NMFS confirmed that Kyara was covered by the necropsy and clinical history provision of Tilikum's permit.

20. On July 31, 2017, AWI and other animal welfare organizations wrote to NOAA/NMFS asking for enforcement of the necropsy and clinical history provision of Tilikum's permit for Kyara's records. Counsel to AWI submitted a revised version of the draft legal opinion supporting this conclusion to NOAA/NMFS on August 14, 2017.

21. NOAA/NMFS responded on September 7, 2017, simply restating its March 10, 2017 email message that the permit had been extinguished by the 1994 MMPA amendments.

22. On August 15, 2017, Kasatka, an orca held at SeaWorld's San Diego facility, was euthanized due to a bacterial infection. Kasatka's 1978 MMPA permit included a necropsy and clinical history requirement. AWI, and the other organizations promptly requested

NOAA/NMFS to enforce the permit, by letter dated August 25, 2017, and by an updated version of the legal opinion, by letter from counsel dated August 30, 2017.

23. By letter dated October 18, 2017, NOAA/NMFS issued the same response as in its March 10, 2017 email on Tilikum's death and its September 7, 2017 letter on Kyara's death, stating that the necropsy and clinical history requirement in Kasatka's permit had been extinguished. Again, NOAA/NMFS provided no explanation for its legal conclusion.

24. After the death of three SeaWorld orcas over a seven-month period, NOAA/NMFS has refused to release or disclose the legal rationale for its conclusion that SeaWorld can ignore clearly stated permit requirements and withhold information that would shed light on the cause of death and medical condition of these whales during their lives in captivity and benefit science and marine mammal husbandry, stranding response, and medical care. SeaWorld refuses to release the whales' clinical histories or necropsy reports.

C. The AWI FOIA Request

25. By letters sent by email on September 29, 2017, AWI submitted FOIA requests to NOAA/NMFS, FWS, and MMC for all documents from January 1, 2017 to May 1, 2017 regarding NMFS' March 10, 2017 determination that the necropsy and clinical history requirements of Public Display Permit No. 774 for Tilikum were extinguished by the 1994 MMPA amendments. Exhibit 1, Declaration of Donald C. Baur, dated January 8, 2018 ("Baur Decl.") at ¶ 2, Attachment A. On the same date, AWI submitted a FOIA request to APHIS, asking for "all requests that APHIS has submitted since January 1, 1994 under 9 C.F.R. § 3.110(g) requesting necropsy records for marine mammals that have died in captivity, and all necropsy records that APHIS has received in response to those requests."

26. Under FOIA, the deadline for agency response to the requests was October 30, 2017.

27. By letter to AWI dated October 5, 2017, APHIS's FOIA Director confirmed receipt of the FOIA request. The letter identified an anticipated response date of October 30, 2017. On December 8, 2017, APHIS responded to AWI's FOIA request.[2]

28. By voice message on October 4, 2017, the MMC confirmed receipt of AWI's FOIA request. In a letter sent by email, dated December 18, 2017, Michael L. Gosliner, MMC General Counsel, responded to the FOIA request with a partial release of documents. In the MMC response letter, Mr. Gosliner stated:

> I am sympathetic to the position that your organization finds itself in — the responsible agency (NMFS) has given you its legal conclusion that the 1994 amendments to the MMPA extinguished the permit terms and conditions related to necropsies and clinical histories, but has declined to provide you with its rationale for this conclusion. I can see where that agency would not want to share its draft legal analysis outside of the government, but once a conclusion has been reached, its final position no longer is pre-decisional.[3]

The MMC also stated that it could not release its own documents that would shed light on the NOAA/NMFS legal position without concurrence from NOAA/NMFS.[4]

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[2] APHIS confirmed that, since 1994, it has not required licensees to submit necropsy reports for any marine mammals. As a result, it had no documents to release.

[3] The MMC's FOIA response indicates that NOAA/NMFS had not completed its consultation with its sister agencies on the legal question at the time it announced its conclusion on March 10, 2017.

[4] The MMC request revealed the limited nature of the AWI request, by identifying only nine responsive documents withheld based on the NOAA/NMFS position. The MMC letter also confirmed that it had coordinated its response "with the other agencies," indicating that NOAA/NMFS is aware of the FOIA request.

29. By email on September 29, 2017, FWS's Headquarters FOIA Office acknowledged receipt of the FOIA request. The email stated that the request was forwarded to the Division of Management Authority for processing.

30. The initial FOIA request letter to NMFS was confirmed delivered to NOAA/NMFS by AWI email on September 29, 2017. A follow-up letter was also sent by email to NMFS on December 4, 2017, asking for a response by December 15, 2017. Baur Decl. ¶ 3, Attachment B. Finally, on December 22, 2017, a copy of the December 4 letter was sent again by email, with a specific request that NMFS acknowledge receipt. *Id.* ¶ 4, Attachment C.

31. As of the date of this complaint, NOAA/NMFS has never even acknowledged receipt of the September 29, 2017 request, the December 4, 2017 follow-up letter, or the December 22, 2017 email confirmation request.

32. To date, more than three months after AWI's initial letter, and more than two months after the statutory deadline, NOAA/NMFS has not responded in any way to the September 29, 2017 AWI FOIA request. Nor has the Agency provided AWI with any explanation for the ongoing delay. The other agencies have either responded in full (APHIS and MMC) or acknowledged receipt and confirmed that review is underway (FWS).

CLAIM FOR RELIEF

33. AWI has a statutory right to the requested records. NOAA/NMFS, in violation of FOIA and AWI's rights under FOIA, has failed to provide the records, or any substantive determination regarding them, by the mandatory deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

REQUESTED RELIEF

34. AWI respectfully requests that the Court grant the following relief:

a. Declare that NMFS is in violation of FOIA;

b. Enjoin NMFS from continuing to withhold the requested records and order NMFS immediately to release the records in full to AWI;

c. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F)(i) that the "circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding . . . .";

d. Award Plaintiff its attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);

e. Award any other relief this Court finds just and proper.

Dated this 9th day of January, 2018

Respectfully submitted,

/s/Donald C. Baur

Donald C. Baur
D.C. Bar No. 393621
Perkins Coie LLP
700 13th Street, NW, Suite 600
Washington, D.C. 20005-3960
(202) 654-6200
DBaur@perkinscoie.com

Sunny Tsou
(*pro hac vice* application pending)
Perkins Coie LLP
505 Howard Street
Suite 1000
San Francisco, CA 94105
(415) 344-7000
STsou@perkinscoie.com

Counsel for Plaintiff

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE,	)	
	)	
Plaintiff,	)	
v.	)	Civ. No.
	)	
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF DONALD C. BAUR

I, DONALD C. BAUR, declare as follows:

1. I am an attorney duly licensed to practice law in the District of Columbia. I am a partner of the law firm of Perkins Coie LLP in Washington, D.C. and attorney of record for the Animal Welfare Institute. I am familiar with the matter set forth herein and if called as a witness, I could and would competently testify thereto.

2. Attached as Attachment A is a true and correct copy of a Freedom of Information Act (FOIA) request letter from the Animal Welfare Institute (AWI) to the National Oceanic and Atmospheric Administration (NOAA), U.S. Fish and Wildlife Service (FWS) and the Marine Mammal Commission (MMC), dated September 29, 2017, and transmittal email from Georgia Hancock, AWI, to NOAA (foia@noaa.gov), FWS (fwhq_foia@fws.gov), and MMC (mmc@mmc.gov), dated September 29, 2017.

3. Attached as Attachment B is a true and correct copy of a "follow-up" letter from AWI to NOAA, regarding "Freedom of Information Act Request," dated December 4, 2017, and

transmittal email from Sheri Pais, Perkins Coie, to NOAA (foia@noaa.gov), dated December 4, 2017.

4. Attached as Attachment C is a true and correct copy of an email from Sheri Pais, Perkins Coie, to NOAA (foia@noaa.gov), regarding "AWI Freedom of Information Act Request Follow Up Letter," dated December 22, 2017, and attaching the December 4, 2017 follow up letter.

Executed within the United States this 8th day of January, 2018

Donald C. Baur

Donald C. Baur

Attachment A

From:	Georgia Hancock
To:	FOIA@noaa.gov; fwhq_foia@fws.gov; mmc@mmc.gov
Cc:	Baur, Don (WDC); Naomi Rose
Subject:	AWI FOIA to NOAA, FWS, MMC 9-29-2017
Attachments:	NOAA NMFS FWS MMC FOIA 9.29.17.pdf

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock
Of Counsel
georgia@awionline.org
mobile: 607-329-8638
Animal Welfare Institute
Visit us at awionline.org

Animal Welfare Institute

9903 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

September 29, 2017

VIA OVERNIGHT MAIL AND EMAIL

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

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Michael Gosliner
Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, Maryland 20814
mmc@mmc.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

Attachment B

From:	Pais, Sheri (WDC)
To:	"FOIA@noaa.gov"
Cc:	Georgia Hancock (georgia@awionline.org); Naomi Rose (naomi@awionline.org); Baur, Don (Perkins Coie)
Subject:	AWI Freedom of Information Act Request Follow Up Letter
Date:	Monday, December 04, 2017 8:38:00 AM
Attachments:	2017.12.04 AWI Letter to NOAA NMFS re Sept 29 2017 FOIA Request.pdf

---

NOAA FOIA Officer –

Attached please find the Dec. 4 letter from the Animal Welfare Institute (AWI) pertaining to its September 29, 2017 FOIA Request.

Thank you,

Sheri Pais

Sheri Pais | Perkins Coie LLP
SENIOR PARALEGAL
700 Thirteenth Street, N.W. Suite 600
Washington, DC 20005-3960
D. +1.202.654.1735
F. +1.202.654.6211
E. SPais@perkinscoie.com

Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

December 4, 2017

VIA OVERNIGHT MAIL AND EMAIL

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of the Interior, 43 C.F.R., Part 2, I am writing on behalf of the Animal Welfare Institute ("AWI") to follow up with regard to the September 29, 2017 request submitted to the Fish and Wildlife Service ("FWS") pertaining to certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for the male orca Tilikum (Permit No. 774).

AWI requested all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

While AWI received an acknowledgment of its request from headquarters on the submittal date of September 29, to date AWI has not received a formal acknowledgment from the Division of Management Authority (DMA), the division to which the request was forwarded for processing, nor has AWI received a response to its FOIA request. AWI should not need to remind the agency of its obligation to respond to AWI's FOIA request within twenty work days. As the agency has allowed that time period to elapse, AWI is prepared to exercise the legal options available to it under FOIA if we do not receive a complete response to our request by December 15, 2017.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

Attachment C

From:	Pais, Sheri (WDC)
To:	"foia@noaa.gov"
Bcc:	Baur, Don (Perkins Coie)
Subject:	FW: AWI Freedom of Information Act Request Follow Up Letter
Date:	Friday, December 22, 2017 11:06:00 AM
Attachments:	2017.12.04 AWI Letter to NOAA NMFS re Sept 29 2017 FOIA Request.pdf

---

Good morning—

Please confirm receipt.

Thank you.

Sheri Pais | **Perkins Coie LLP**
SENIOR PARALEGAL
700 Thirteenth Street, N.W. Suite 600
Washington, DC 20005-3960
D. +1.202.654.1735
F. +1.202.654.6211
E. SPais@perkinscoie.com

From: Pais, Sheri (WDC)
Sent: Monday, December 04, 2017 8:39 AM
To: 'FOIA@noaa.gov'
Cc: Georgia Hancock (georgia@awionline.org); Naomi Rose (naomi@awionline.org); Baur, Don (Perkins Coie)
Subject: AWI Freedom of Information Act Request Follow Up Letter

NOAA FOIA Officer –

Attached please find the Dec. 4 letter from the Animal Welfare Institute (AWI) pertaining to its September 29, 2017 FOIA Request.

Thank you,

Sheri Pais

Sheri Pais | **Perkins Coie LLP**
SENIOR PARALEGAL
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awionline.org phone (202) 337-2332 fax (202) 446-2131

December 4, 2017

VIA OVERNIGHT MAIL AND EMAIL

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

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AWI requested all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

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Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, January 9, 2018 5:11 PM
To: Lola Stith - NOAA Affiliate
Subject: Complaint, Declaration, and Original Request
Attachments: 2018.01.08 AWI Complaint.pdf; 2018.01.08 Declaration of Donald Baur.pdf; Original Request.pdf

Here's the background docs for the Complaint they filed--

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

ANIMAL WELFARE INSTITUTE 900 Pennsylvania Avenue, SE Washington, D.C. 20003, Plaintiff, v. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, 1401 Constitution Avenue, NW, Room 5128 Washington, D.C. 20230 and NATIONAL MARINE FISHERIES SERVICE, 1315 East-West Highway Silver Spring, MD 20910, Defendants.	)	Civ. No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Animal Welfare Institute brings this action against defendants National Oceanic and Atmospheric Administration and National Marine Fisheries Service for violations of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

PARTIES

2. Plaintiff Animal Welfare Institute ("AWI") is a 501(c)(3) non-profit organization that seeks to protect animals from human inflicted suffering. In particular, AWI has advocated for the protection of whales and other marine life from life from human activities such as harmful fishing practices, hunting, underwater noise production, and inhumane practices resulting from captive maintenance for purposes of public display and scientific research. AWI is the requester of the records at issue.

3. Defendant National Oceanic and Atmospheric Administration ("NOAA") is an agency of the federal government within the U.S. Department of Commerce that focuses on the conditions of the oceans and the atmosphere, including marine wildlife.

4. Defendant National Marine Fisheries Service ("NMFS") is an agency of the federal government within NOAA that has jurisdiction over whales under the Marine Mammal Protection Act ("MMPA"), 16 U.S.C. §§ 1361 - 1423h, and is in possession of the records requested by AWI.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

FACTS GIVING RISE TO PLAINTIFF'S CLAIM

A. FOIA Requirements

7. The purpose of FOIA is to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865, 869 (D.C. Cir. 2010) (quotations omitted). In enacting FOIA, Congress intended the primary objective of the Act to be the full disclosure of federal agency records so long as information is not exempted by clearly delineated statutory language. *Id.*

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administrative remedies"—and hence may file suit under the Act's citizen suit provision—"with respect to [a] request if the agency fails to comply with the . . . time limit" set forth in the statute for a substantive response. *Id.* § 552(a)(6)(C)(i).

9. The federal regulations implementing FOIA for NOAA and NMFS are located at 15 C.F.R. § 4.1, *et seq*. 15 C.F.R. § 4.6 codifies the requirement that NOAA/NMFS respond within 20 working days of receiving a FOIA request with a determination of compliance.

B. The Public Interest Need for the Documents Subject to the FOIA Request

10. In 2013, the documentary film *Blackfish* drew public attention to the plight of Tilikum, an orca held in captivity by SeaWorld Parks & Entertainment ("SeaWorld"), and other orcas now maintained in aquariums and theme parks around the world. *Blackfish* set off a strong negative public reaction to SeaWorld and the conditions under which orcas are held in captivity.

11. On March 8, 2016, SeaWorld released a video on its website describing Tilikum's declining health and indicating that he was not expected to survive.

12. Beginning in October 2016, the People for the Ethical Treatment of Animals ("PETA") initiated the first of what would be several meetings and communications with NOAA/NMFS regarding Tilikum. AWI joined this effort by December 2016. In anticipation of Tilikum's death, NOAA/NMFS was presented with a draft legal opinion explaining why the 1992 MMPA permit authorizing the importation of Tilikum requires SeaWorld to submit to NOAA/NMFS the necropsy report and clinical history for Tilikum in the event of his death. In these meetings and communications, and through the draft legal opinion, AWI (with PETA) sought NOAA/NMFS input and comments on the applicability of the necropsy and clinical history permit requirement.

13. In the following months, AWI also presented its views on the necropsy and clinical history requirements of MMPA permits to the other federal agencies with jurisdiction over marine mammals ─ the U.S. Fish and Wildlife Service ("FWS"), the Marine Mammal Commission ("MMC"), and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS").[1]

14. In these agency meetings and communications, AWI repeatedly stressed the importance of necropsy reports and clinical histories for purposes of scientific research, medical care (including for free-ranging, stranded individuals), animal husbandry, and public education, and demonstrated that the benefits resulting from this information applied to whales held both in captivity and in the wild.

15. In these meetings and communications, NOAA/NMFS never took a position on whether SeaWorld had to comply with the necropsy and clinical history requirements of Tilikum's permit.

16. Tilikum died on January 6, 2017 at SeaWorld's Orlando facility. AWI and other animal welfare organizations immediately notified NOAA/NMFS that Tilikum's MMPA permit required SeaWorld to submit the necropsy and clinical history report within 30 days. Based on information and belief, SeaWorld never submitted the necropsy and clinical history report required by the permit to NOAA/NMFS.

17. On March 10, 2017, NOAA/NMFS responded to the animal welfare organizations' notice with an email stating that it was willing to meet to discuss the issue but that it had concluded that the necropsy and clinical history provisions of Tilikum's permit had been

[1] Under the MMPA, NOAA/NMFS has jurisdiction over whales, dolphins and seals. FWS has jurisdiction over polar bears, manatees, walrus and sea otters. 16 U.S.C. § 1362(12)(A). The MMC serves in an independent advisory and oversight role. *Id.* §§ 1401-1407. APHIS jurisdiction is not under the MMPA but applies to marine mammals in certain captive maintenance facilities under the Animal Welfare Act. 7 U.S.C. §§ 2131-2159.

extinguished by amendments to the MMPA in 1994 and that "the legal analysis supporting this determination is exempt from disclosure under the attorney-client privilege, and we will not be discussing it in any detail at the meeting." Thus, after months of effort to engage NOAA/NMFS in a collaborative dialogue regarding the permit requirements for SeaWorld to release Tilikum's health records, AWI and the other organizations had no explanation from NOAA/NMFS for the legal conclusion, contrary to the plain language of the permit, that the necropsy and clinical history requirement did not apply and were told that none would be provided.

18. AWI contacted SeaWorld directly by email on March 25, 2017 asking for voluntary release of Tilikum's records. SeaWorld refused to do so in an April 13, 2017 email. Five animal welfare organizations sent a letter to SeaWorld on August 8, 2017, again asking for voluntary compliance. SeaWorld has not replied and continues to withhold the documents.

19. On July 24, 2017, Tilikum's granddaughter Kyara died at SeaWorld's San Antonio facility. The draft legal opinion previously provided to NOAA/NMFS confirmed that Kyara was covered by the necropsy and clinical history provision of Tilikum's permit.

20. On July 31, 2017, AWI and other animal welfare organizations wrote to NOAA/NMFS asking for enforcement of the necropsy and clinical history provision of Tilikum's permit for Kyara's records. Counsel to AWI submitted a revised version of the draft legal opinion supporting this conclusion to NOAA/NMFS on August 14, 2017.

21. NOAA/NMFS responded on September 7, 2017, simply restating its March 10, 2017 email message that the permit had been extinguished by the 1994 MMPA amendments.

22. On August 15, 2017, Kasatka, an orca held at SeaWorld's San Diego facility, was euthanized due to a bacterial infection. Kasatka's 1978 MMPA permit included a necropsy and clinical history requirement. AWI, and the other organizations promptly requested

NOAA/NMFS to enforce the permit, by letter dated August 25, 2017, and by an updated version of the legal opinion, by letter from counsel dated August 30, 2017.

23. By letter dated October 18, 2017, NOAA/NMFS issued the same response as in its March 10, 2017 email on Tilikum's death and its September 7, 2017 letter on Kyara's death, stating that the necropsy and clinical history requirement in Kasatka's permit had been extinguished. Again, NOAA/NMFS provided no explanation for its legal conclusion.

24. After the death of three SeaWorld orcas over a seven-month period, NOAA/NMFS has refused to release or disclose the legal rationale for its conclusion that SeaWorld can ignore clearly stated permit requirements and withhold information that would shed light on the cause of death and medical condition of these whales during their lives in captivity and benefit science and marine mammal husbandry, stranding response, and medical care. SeaWorld refuses to release the whales' clinical histories or necropsy reports.

C. The AWI FOIA Request

25. By letters sent by email on September 29, 2017, AWI submitted FOIA requests to NOAA/NMFS, FWS, and MMC for all documents from January 1, 2017 to May 1, 2017 regarding NMFS' March 10, 2017 determination that the necropsy and clinical history requirements of Public Display Permit No. 774 for Tilikum were extinguished by the 1994 MMPA amendments. Exhibit 1, Declaration of Donald C. Baur, dated January 8, 2018 ("Baur Decl.") at ¶ 2, Attachment A. On the same date, AWI submitted a FOIA request to APHIS, asking for "all requests that APHIS has submitted since January 1, 1994 under 9 C.F.R. § 3.110(g) requesting necropsy records for marine mammals that have died in captivity, and all necropsy records that APHIS has received in response to those requests."

26. Under FOIA, the deadline for agency response to the requests was October 30, 2017.

27. By letter to AWI dated October 5, 2017, APHIS's FOIA Director confirmed receipt of the FOIA request. The letter identified an anticipated response date of October 30, 2017. On December 8, 2017, APHIS responded to AWI's FOIA request.[2]

28. By voice message on October 4, 2017, the MMC confirmed receipt of AWI's FOIA request. In a letter sent by email, dated December 18, 2017, Michael L. Gosliner, MMC General Counsel, responded to the FOIA request with a partial release of documents. In the MMC response letter, Mr. Gosliner stated:

> I am sympathetic to the position that your organization finds itself in — the responsible agency (NMFS) has given you its legal conclusion that the 1994 amendments to the MMPA extinguished the permit terms and conditions related to necropsies and clinical histories, but has declined to provide you with its rationale for this conclusion. I can see where that agency would not want to share its draft legal analysis outside of the government, but once a conclusion has been reached, its final position no longer is pre-decisional.[3]

The MMC also stated that it could not release its own documents that would shed light on the NOAA/NMFS legal position without concurrence from NOAA/NMFS.[4]

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[2] APHIS confirmed that, since 1994, it has not required licensees to submit necropsy reports for any marine mammals. As a result, it had no documents to release.

[3] The MMC's FOIA response indicates that NOAA/NMFS had not completed its consultation with its sister agencies on the legal question at the time it announced its conclusion on March 10, 2017.

[4] The MMC request revealed the limited nature of the AWI request, by identifying only nine responsive documents withheld based on the NOAA/NMFS position. The MMC letter also confirmed that it had coordinated its response "with the other agencies," indicating that NOAA/NMFS is aware of the FOIA request.

29. By email on September 29, 2017, FWS's Headquarters FOIA Office acknowledged receipt of the FOIA request. The email stated that the request was forwarded to the Division of Management Authority for processing.

30. The initial FOIA request letter to NMFS was confirmed delivered to NOAA/NMFS by AWI email on September 29, 2017. A follow-up letter was also sent by email to NMFS on December 4, 2017, asking for a response by December 15, 2017. Baur Decl. ¶ 3, Attachment B. Finally, on December 22, 2017, a copy of the December 4 letter was sent again by email, with a specific request that NMFS acknowledge receipt. *Id.* ¶ 4, Attachment C.

31. As of the date of this complaint, NOAA/NMFS has never even acknowledged receipt of the September 29, 2017 request, the December 4, 2017 follow-up letter, or the December 22, 2017 email confirmation request.

32. To date, more than three months after AWI's initial letter, and more than two months after the statutory deadline, NOAA/NMFS has not responded in any way to the September 29, 2017 AWI FOIA request. Nor has the Agency provided AWI with any explanation for the ongoing delay. The other agencies have either responded in full (APHIS and MMC) or acknowledged receipt and confirmed that review is underway (FWS).

CLAIM FOR RELIEF

33. AWI has a statutory right to the requested records. NOAA/NMFS, in violation of FOIA and AWI's rights under FOIA, has failed to provide the records, or any substantive determination regarding them, by the mandatory deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

REQUESTED RELIEF

34. AWI respectfully requests that the Court grant the following relief:

a. Declare that NMFS is in violation of FOIA;

b. Enjoin NMFS from continuing to withhold the requested records and order NMFS immediately to release the records in full to AWI;

c. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F)(i) that the "circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding . . . .";

d. Award Plaintiff its attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);

e. Award any other relief this Court finds just and proper.

Dated this 9th day of January, 2018

Respectfully submitted,

/s/Donald C. Baur

Donald C. Baur
D.C. Bar No. 393621
Perkins Coie LLP
700 13th Street, NW, Suite 600
Washington, D.C. 20005-3960
(202) 654-6200
DBaur@perkinscoie.com

Sunny Tsou
(*pro hac vice* application pending)
Perkins Coie LLP
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Suite 1000
San Francisco, CA 94105
(415) 344-7000
STsou@perkinscoie.com

Counsel for Plaintiff

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE,	)	
	)	
Plaintiff,	)	
v.	)	Civ. No.
	)	
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF DONALD C. BAUR

I, DONALD C. BAUR, declare as follows:

1. I am an attorney duly licensed to practice law in the District of Columbia. I am a partner of the law firm of Perkins Coie LLP in Washington, D.C. and attorney of record for the Animal Welfare Institute. I am familiar with the matter set forth herein and if called as a witness, I could and would competently testify thereto.

2. Attached as Attachment A is a true and correct copy of a Freedom of Information Act (FOIA) request letter from the Animal Welfare Institute (AWI) to the National Oceanic and Atmospheric Administration (NOAA), U.S. Fish and Wildlife Service (FWS) and the Marine Mammal Commission (MMC), dated September 29, 2017, and transmittal email from Georgia Hancock, AWI, to NOAA (foia@noaa.gov), FWS (fwhq_foia@fws.gov), and MMC (mmc@mmc.gov), dated September 29, 2017.

3. Attached as Attachment B is a true and correct copy of a "follow-up" letter from AWI to NOAA, regarding "Freedom of Information Act Request," dated December 4, 2017, and

transmittal email from Sheri Pais, Perkins Coie, to NOAA (foia@noaa.gov), dated December 4, 2017.

4. Attached as Attachment C is a true and correct copy of an email from Sheri Pais, Perkins Coie, to NOAA (foia@noaa.gov), regarding "AWI Freedom of Information Act Request Follow Up Letter," dated December 22, 2017, and attaching the December 4, 2017 follow up letter.

Executed within the United States this 8th day of January, 2018

Donald C. Baur

Donald C. Baur

Attachment A

From:	Georgia Hancock
To:	FOIA@noaa.gov; fwhq_foia@fws.gov; mmc@mmc.gov
Cc:	Baur, Don (WDC); Naomi Rose
Subject:	AWI FOIA to NOAA, FWS, MMC 9-29-2017
Attachments:	NOAA NMFS FWS MMC FOIA 9.29.17.pdf

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock
Of Counsel
georgia@awionline.org
mobile: 607-329-8638
Animal Welfare Institute
Visit us at awionline.org

Animal Welfare Institute

9903 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

September 29, 2017

VIA OVERNIGHT MAIL AND EMAIL

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

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Michael Gosliner
Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, Maryland 20814
mmc@mmc.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

Attachment B

From:	Pais, Sheri (WDC)
To:	"FOIA@noaa.gov"
Cc:	Georgia Hancock (georgia@awionline.org); Naomi Rose (naomi@awionline.org); Baur, Don (Perkins Coie)
Subject:	AWI Freedom of Information Act Request Follow Up Letter
Date:	Monday, December 04, 2017 8:38:00 AM
Attachments:	2017.12.04 AWI Letter to NOAA NMFS re Sept 29 2017 FOIA Request.pdf

---

NOAA FOIA Officer –

Attached please find the Dec. 4 letter from the Animal Welfare Institute (AWI) pertaining to its September 29, 2017 FOIA Request.

Thank you,

Sheri Pais

Sheri Pais | Perkins Coie LLP
SENIOR PARALEGAL
700 Thirteenth Street, N.W. Suite 600
Washington, DC 20005-3960
D. +1.202.654.1735
F. +1.202.654.6211
E. SPais@perkinscoie.com

Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

December 4, 2017

VIA OVERNIGHT MAIL AND EMAIL

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of the Interior, 43 C.F.R., Part 2, I am writing on behalf of the Animal Welfare Institute ("AWI") to follow up with regard to the September 29, 2017 request submitted to the Fish and Wildlife Service ("FWS") pertaining to certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for the male orca Tilikum (Permit No. 774).

AWI requested all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

While AWI received an acknowledgment of its request from headquarters on the submittal date of September 29, to date AWI has not received a formal acknowledgment from the Division of Management Authority (DMA), the division to which the request was forwarded for processing, nor has AWI received a response to its FOIA request. AWI should not need to remind the agency of its obligation to respond to AWI's FOIA request within twenty work days. As the agency has allowed that time period to elapse, AWI is prepared to exercise the legal options available to it under FOIA if we do not receive a complete response to our request by December 15, 2017.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

Attachment C

From:	Pais, Sheri (WDC)
To:	"foia@noaa.gov"
Bcc:	Baur, Don (Perkins Coie)
Subject:	FW: AWI Freedom of Information Act Request Follow Up Letter
Date:	Friday, December 22, 2017 11:06:00 AM
Attachments:	2017.12.04 AWI Letter to NOAA NMFS re Sept 29 2017 FOIA Request.pdf

---

Good morning—

Please confirm receipt.

Thank you.

Sheri Pais | **Perkins Coie LLP**
SENIOR PARALEGAL
700 Thirteenth Street, N.W. Suite 600
Washington, DC 20005-3960
D. +1.202.654.1735
F. +1.202.654.6211
E. SPais@perkinscoie.com

From: Pais, Sheri (WDC)
Sent: Monday, December 04, 2017 8:39 AM
To: 'FOIA@noaa.gov'
Cc: Georgia Hancock (georgia@awionline.org); Naomi Rose (naomi@awionline.org); Baur, Don (Perkins Coie)
Subject: AWI Freedom of Information Act Request Follow Up Letter

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Thank you,

Sheri Pais

Sheri Pais | **Perkins Coie LLP**
SENIOR PARALEGAL
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December 4, 2017

VIA OVERNIGHT MAIL AND EMAIL

Carrie Hyde-Michaels
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U.S. Fish and Wildlife Service
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fwhq_foia@fws.gov

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AWI requested all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

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Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

From:	Georgia Hancock
To:	FOIA@noaa.gov; fwhq_foia@fws.gov; mmc@mmc.gov
Cc:	Baur, Don (WDC); Naomi Rose
Subject:	AWI FOIA to NOAA, FWS, MMC 9-29-2017
Attachments:	NOAA NMFS FWS MMC FOIA 9.29.17.pdf

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock
Of Counsel
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mobile: 607-329-8638
Animal Welfare Institute
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Animal Welfare Institute

9903 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

September 29, 2017

VIA OVERNIGHT MAIL AND EMAIL

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

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Michael Gosliner
Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, Maryland 20814
mmc@mmc.gov

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Dear FOIA Officer:

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Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 10, 2018 2:04 PM
To: Mary O'Brien - NOAA Federal
Subject: Re: Any luck tracking down the AWI FOIA?
Attachments: 2018.01.08 Declaration of Donald Baur.pdf; Original Request.pdf; 2018.01.08 AWI Complaint.pdf

Here you go

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 Wed, Jan 10, 2018 at 1:53 PM, Mary O'Brien - NOAA Federal <mary.obrien@noaa.gov> wrote:

> I'm at 301-713-9674.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE 900 Pennsylvania Avenue, SE Washington, D.C. 20003, Plaintiff, v. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, 1401 Constitution Avenue, NW, Room 5128 Washington, D.C. 20230 and NATIONAL MARINE FISHERIES SERVICE, 1315 East-West Highway Silver Spring, MD 20910, Defendants.	)	Civ. No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Animal Welfare Institute brings this action against defendants National Oceanic and Atmospheric Administration and National Marine Fisheries Service for violations of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

PARTIES

2. Plaintiff Animal Welfare Institute ("AWI") is a 501(c)(3) non-profit organization that seeks to protect animals from human inflicted suffering. In particular, AWI has advocated for the protection of whales and other marine life from life from human activities such as harmful fishing practices, hunting, underwater noise production, and inhumane practices resulting from captive maintenance for purposes of public display and scientific research. AWI is the requester of the records at issue.

3. Defendant National Oceanic and Atmospheric Administration ("NOAA") is an agency of the federal government within the U.S. Department of Commerce that focuses on the conditions of the oceans and the atmosphere, including marine wildlife.

4. Defendant National Marine Fisheries Service ("NMFS") is an agency of the federal government within NOAA that has jurisdiction over whales under the Marine Mammal Protection Act ("MMPA"), 16 U.S.C. §§ 1361 - 1423h, and is in possession of the records requested by AWI.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

FACTS GIVING RISE TO PLAINTIFF'S CLAIM

A. FOIA Requirements

7. The purpose of FOIA is to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865, 869 (D.C. Cir. 2010) (quotations omitted). In enacting FOIA, Congress intended the primary objective of the Act to be the full disclosure of federal agency records so long as information is not exempted by clearly delineated statutory language. *Id.*

8. FOIA establishes a broad right of public access to federal agency records, subject only to nine delineated exemptions. 5 U.S.C. § 552(b). "Each agency, upon any request" for enumerated records must "determine within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such a request" of the "determination and the reasons therefor . . . ." *Id.* § 552(a)(6)(A)(i). A requester "shall be deemed to have exhausted [its]

administrative remedies"—and hence may file suit under the Act's citizen suit provision—"with respect to [a] request if the agency fails to comply with the . . . time limit" set forth in the statute for a substantive response. *Id.* § 552(a)(6)(C)(i).

9. The federal regulations implementing FOIA for NOAA and NMFS are located at 15 C.F.R. § 4.1, *et seq*. 15 C.F.R. § 4.6 codifies the requirement that NOAA/NMFS respond within 20 working days of receiving a FOIA request with a determination of compliance.

B. The Public Interest Need for the Documents Subject to the FOIA Request

10. In 2013, the documentary film *Blackfish* drew public attention to the plight of Tilikum, an orca held in captivity by SeaWorld Parks & Entertainment ("SeaWorld"), and other orcas now maintained in aquariums and theme parks around the world. *Blackfish* set off a strong negative public reaction to SeaWorld and the conditions under which orcas are held in captivity.

11. On March 8, 2016, SeaWorld released a video on its website describing Tilikum's declining health and indicating that he was not expected to survive.

12. Beginning in October 2016, the People for the Ethical Treatment of Animals ("PETA") initiated the first of what would be several meetings and communications with NOAA/NMFS regarding Tilikum. AWI joined this effort by December 2016. In anticipation of Tilikum's death, NOAA/NMFS was presented with a draft legal opinion explaining why the 1992 MMPA permit authorizing the importation of Tilikum requires SeaWorld to submit to NOAA/NMFS the necropsy report and clinical history for Tilikum in the event of his death. In these meetings and communications, and through the draft legal opinion, AWI (with PETA) sought NOAA/NMFS input and comments on the applicability of the necropsy and clinical history permit requirement.

13. In the following months, AWI also presented its views on the necropsy and clinical history requirements of MMPA permits to the other federal agencies with jurisdiction over marine mammals ─ the U.S. Fish and Wildlife Service ("FWS"), the Marine Mammal Commission ("MMC"), and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS").[1]

14. In these agency meetings and communications, AWI repeatedly stressed the importance of necropsy reports and clinical histories for purposes of scientific research, medical care (including for free-ranging, stranded individuals), animal husbandry, and public education, and demonstrated that the benefits resulting from this information applied to whales held both in captivity and in the wild.

15. In these meetings and communications, NOAA/NMFS never took a position on whether SeaWorld had to comply with the necropsy and clinical history requirements of Tilikum's permit.

16. Tilikum died on January 6, 2017 at SeaWorld's Orlando facility. AWI and other animal welfare organizations immediately notified NOAA/NMFS that Tilikum's MMPA permit required SeaWorld to submit the necropsy and clinical history report within 30 days. Based on information and belief, SeaWorld never submitted the necropsy and clinical history report required by the permit to NOAA/NMFS.

17. On March 10, 2017, NOAA/NMFS responded to the animal welfare organizations' notice with an email stating that it was willing to meet to discuss the issue but that it had concluded that the necropsy and clinical history provisions of Tilikum's permit had been

[1] Under the MMPA, NOAA/NMFS has jurisdiction over whales, dolphins and seals. FWS has jurisdiction over polar bears, manatees, walrus and sea otters. 16 U.S.C. § 1362(12)(A). The MMC serves in an independent advisory and oversight role. *Id.* §§ 1401-1407. APHIS jurisdiction is not under the MMPA but applies to marine mammals in certain captive maintenance facilities under the Animal Welfare Act. 7 U.S.C. §§ 2131-2159.

extinguished by amendments to the MMPA in 1994 and that "the legal analysis supporting this determination is exempt from disclosure under the attorney-client privilege, and we will not be discussing it in any detail at the meeting." Thus, after months of effort to engage NOAA/NMFS in a collaborative dialogue regarding the permit requirements for SeaWorld to release Tilikum's health records, AWI and the other organizations had no explanation from NOAA/NMFS for the legal conclusion, contrary to the plain language of the permit, that the necropsy and clinical history requirement did not apply and were told that none would be provided.

18. AWI contacted SeaWorld directly by email on March 25, 2017 asking for voluntary release of Tilikum's records. SeaWorld refused to do so in an April 13, 2017 email. Five animal welfare organizations sent a letter to SeaWorld on August 8, 2017, again asking for voluntary compliance. SeaWorld has not replied and continues to withhold the documents.

19. On July 24, 2017, Tilikum's granddaughter Kyara died at SeaWorld's San Antonio facility. The draft legal opinion previously provided to NOAA/NMFS confirmed that Kyara was covered by the necropsy and clinical history provision of Tilikum's permit.

20. On July 31, 2017, AWI and other animal welfare organizations wrote to NOAA/NMFS asking for enforcement of the necropsy and clinical history provision of Tilikum's permit for Kyara's records. Counsel to AWI submitted a revised version of the draft legal opinion supporting this conclusion to NOAA/NMFS on August 14, 2017.

21. NOAA/NMFS responded on September 7, 2017, simply restating its March 10, 2017 email message that the permit had been extinguished by the 1994 MMPA amendments.

22. On August 15, 2017, Kasatka, an orca held at SeaWorld's San Diego facility, was euthanized due to a bacterial infection. Kasatka's 1978 MMPA permit included a necropsy and clinical history requirement. AWI, and the other organizations promptly requested

NOAA/NMFS to enforce the permit, by letter dated August 25, 2017, and by an updated version of the legal opinion, by letter from counsel dated August 30, 2017.

23. By letter dated October 18, 2017, NOAA/NMFS issued the same response as in its March 10, 2017 email on Tilikum's death and its September 7, 2017 letter on Kyara's death, stating that the necropsy and clinical history requirement in Kasatka's permit had been extinguished. Again, NOAA/NMFS provided no explanation for its legal conclusion.

24. After the death of three SeaWorld orcas over a seven-month period, NOAA/NMFS has refused to release or disclose the legal rationale for its conclusion that SeaWorld can ignore clearly stated permit requirements and withhold information that would shed light on the cause of death and medical condition of these whales during their lives in captivity and benefit science and marine mammal husbandry, stranding response, and medical care. SeaWorld refuses to release the whales' clinical histories or necropsy reports.

C. The AWI FOIA Request

25. By letters sent by email on September 29, 2017, AWI submitted FOIA requests to NOAA/NMFS, FWS, and MMC for all documents from January 1, 2017 to May 1, 2017 regarding NMFS' March 10, 2017 determination that the necropsy and clinical history requirements of Public Display Permit No. 774 for Tilikum were extinguished by the 1994 MMPA amendments. Exhibit 1, Declaration of Donald C. Baur, dated January 8, 2018 ("Baur Decl.") at ¶ 2, Attachment A. On the same date, AWI submitted a FOIA request to APHIS, asking for "all requests that APHIS has submitted since January 1, 1994 under 9 C.F.R. § 3.110(g) requesting necropsy records for marine mammals that have died in captivity, and all necropsy records that APHIS has received in response to those requests."

26. Under FOIA, the deadline for agency response to the requests was October 30, 2017.

27. By letter to AWI dated October 5, 2017, APHIS's FOIA Director confirmed receipt of the FOIA request. The letter identified an anticipated response date of October 30, 2017. On December 8, 2017, APHIS responded to AWI's FOIA request.[2]

28. By voice message on October 4, 2017, the MMC confirmed receipt of AWI's FOIA request. In a letter sent by email, dated December 18, 2017, Michael L. Gosliner, MMC General Counsel, responded to the FOIA request with a partial release of documents. In the MMC response letter, Mr. Gosliner stated:

> I am sympathetic to the position that your organization finds itself in — the responsible agency (NMFS) has given you its legal conclusion that the 1994 amendments to the MMPA extinguished the permit terms and conditions related to necropsies and clinical histories, but has declined to provide you with its rationale for this conclusion. I can see where that agency would not want to share its draft legal analysis outside of the government, but once a conclusion has been reached, its final position no longer is pre-decisional.[3]

The MMC also stated that it could not release its own documents that would shed light on the NOAA/NMFS legal position without concurrence from NOAA/NMFS.[4]

---

[2] APHIS confirmed that, since 1994, it has not required licensees to submit necropsy reports for any marine mammals. As a result, it had no documents to release.

[3] The MMC's FOIA response indicates that NOAA/NMFS had not completed its consultation with its sister agencies on the legal question at the time it announced its conclusion on March 10, 2017.

[4] The MMC request revealed the limited nature of the AWI request, by identifying only nine responsive documents withheld based on the NOAA/NMFS position. The MMC letter also confirmed that it had coordinated its response "with the other agencies," indicating that NOAA/NMFS is aware of the FOIA request.

29. By email on September 29, 2017, FWS's Headquarters FOIA Office acknowledged receipt of the FOIA request. The email stated that the request was forwarded to the Division of Management Authority for processing.

30. The initial FOIA request letter to NMFS was confirmed delivered to NOAA/NMFS by AWI email on September 29, 2017. A follow-up letter was also sent by email to NMFS on December 4, 2017, asking for a response by December 15, 2017. Baur Decl. ¶ 3, Attachment B. Finally, on December 22, 2017, a copy of the December 4 letter was sent again by email, with a specific request that NMFS acknowledge receipt. *Id.* ¶ 4, Attachment C.

31. As of the date of this complaint, NOAA/NMFS has never even acknowledged receipt of the September 29, 2017 request, the December 4, 2017 follow-up letter, or the December 22, 2017 email confirmation request.

32. To date, more than three months after AWI's initial letter, and more than two months after the statutory deadline, NOAA/NMFS has not responded in any way to the September 29, 2017 AWI FOIA request. Nor has the Agency provided AWI with any explanation for the ongoing delay. The other agencies have either responded in full (APHIS and MMC) or acknowledged receipt and confirmed that review is underway (FWS).

CLAIM FOR RELIEF

33. AWI has a statutory right to the requested records. NOAA/NMFS, in violation of FOIA and AWI's rights under FOIA, has failed to provide the records, or any substantive determination regarding them, by the mandatory deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

REQUESTED RELIEF

34. AWI respectfully requests that the Court grant the following relief:

a. Declare that NMFS is in violation of FOIA;

b. Enjoin NMFS from continuing to withhold the requested records and order NMFS immediately to release the records in full to AWI;

c. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F)(i) that the "circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding . . . .";

d. Award Plaintiff its attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);

e. Award any other relief this Court finds just and proper.

Dated this 9th day of January, 2018

Respectfully submitted,

/s/Donald C. Baur

Donald C. Baur
D.C. Bar No. 393621
Perkins Coie LLP
700 13th Street, NW, Suite 600
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(202) 654-6200
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Sunny Tsou
(*pro hac vice* application pending)
Perkins Coie LLP
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(415) 344-7000
STsou@perkinscoie.com

Counsel for Plaintiff

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE,	)	
	)	
Plaintiff,	)	
v.	)	Civ. No.
	)	
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF DONALD C. BAUR

I, DONALD C. BAUR, declare as follows:

1. I am an attorney duly licensed to practice law in the District of Columbia. I am a partner of the law firm of Perkins Coie LLP in Washington, D.C. and attorney of record for the Animal Welfare Institute. I am familiar with the matter set forth herein and if called as a witness, I could and would competently testify thereto.

2. Attached as Attachment A is a true and correct copy of a Freedom of Information Act (FOIA) request letter from the Animal Welfare Institute (AWI) to the National Oceanic and Atmospheric Administration (NOAA), U.S. Fish and Wildlife Service (FWS) and the Marine Mammal Commission (MMC), dated September 29, 2017, and transmittal email from Georgia Hancock, AWI, to NOAA (foia@noaa.gov), FWS (fwhq_foia@fws.gov), and MMC (mmc@mmc.gov), dated September 29, 2017.

3. Attached as Attachment B is a true and correct copy of a "follow-up" letter from AWI to NOAA, regarding "Freedom of Information Act Request," dated December 4, 2017, and

transmittal email from Sheri Pais, Perkins Coie, to NOAA (foia@noaa.gov), dated December 4, 2017.

4. Attached as Attachment C is a true and correct copy of an email from Sheri Pais, Perkins Coie, to NOAA (foia@noaa.gov), regarding "AWI Freedom of Information Act Request Follow Up Letter," dated December 22, 2017, and attaching the December 4, 2017 follow up letter.

Executed within the United States this 8th day of January, 2018

Donald C. Baur

Donald C. Baur

Attachment A

From:	Georgia Hancock
To:	FOIA@noaa.gov; fwhq_foia@fws.gov; mmc@mmc.gov
Cc:	Baur, Don (WDC); Naomi Rose
Subject:	AWI FOIA to NOAA, FWS, MMC 9-29-2017
Attachments:	NOAA NMFS FWS MMC FOIA 9.29.17.pdf

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock
Of Counsel
georgia@awionline.org
mobile: 607-329-8638
Animal Welfare Institute
Visit us at awionline.org

Animal Welfare Institute

9903 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

September 29, 2017

VIA OVERNIGHT MAIL AND EMAIL

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

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Michael Gosliner
Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, Maryland 20814
mmc@mmc.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

Attachment B

From:	Pais, Sheri (WDC)
To:	"FOIA@noaa.gov"
Cc:	Georgia Hancock (georgia@awionline.org); Naomi Rose (naomi@awionline.org); Baur, Don (Perkins Coie)
Subject:	AWI Freedom of Information Act Request Follow Up Letter
Date:	Monday, December 04, 2017 8:38:00 AM
Attachments:	2017.12.04 AWI Letter to NOAA NMFS re Sept 29 2017 FOIA Request.pdf

---

NOAA FOIA Officer –

Attached please find the Dec. 4 letter from the Animal Welfare Institute (AWI) pertaining to its September 29, 2017 FOIA Request.

Thank you,

Sheri Pais

Sheri Pais | Perkins Coie LLP
SENIOR PARALEGAL
700 Thirteenth Street, N.W. Suite 600
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D. +1.202.654.1735
F. +1.202.654.6211
E. SPais@perkinscoie.com

Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

December 4, 2017

VIA OVERNIGHT MAIL AND EMAIL

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of the Interior, 43 C.F.R., Part 2, I am writing on behalf of the Animal Welfare Institute ("AWI") to follow up with regard to the September 29, 2017 request submitted to the Fish and Wildlife Service ("FWS") pertaining to certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for the male orca Tilikum (Permit No. 774).

AWI requested all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

While AWI received an acknowledgment of its request from headquarters on the submittal date of September 29, to date AWI has not received a formal acknowledgment from the Division of Management Authority (DMA), the division to which the request was forwarded for processing, nor has AWI received a response to its FOIA request. AWI should not need to remind the agency of its obligation to respond to AWI's FOIA request within twenty work days. As the agency has allowed that time period to elapse, AWI is prepared to exercise the legal options available to it under FOIA if we do not receive a complete response to our request by December 15, 2017.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

Attachment C

From:	Pais, Sheri (WDC)
To:	"foia@noaa.gov"
Bcc:	Baur, Don (Perkins Coie)
Subject:	FW: AWI Freedom of Information Act Request Follow Up Letter
Date:	Friday, December 22, 2017 11:06:00 AM
Attachments:	2017.12.04 AWI Letter to NOAA NMFS re Sept 29 2017 FOIA Request.pdf

---

Good morning—

Please confirm receipt.

Thank you.

Sheri Pais | **Perkins Coie LLP**
SENIOR PARALEGAL
700 Thirteenth Street, N.W. Suite 600
Washington, DC 20005-3960
D. +1.202.654.1735
F. +1.202.654.6211
E. SPais@perkinscoie.com

From: Pais, Sheri (WDC)
Sent: Monday, December 04, 2017 8:39 AM
To: 'FOIA@noaa.gov'
Cc: Georgia Hancock (georgia@awionline.org); Naomi Rose (naomi@awionline.org); Baur, Don (Perkins Coie)
Subject: AWI Freedom of Information Act Request Follow Up Letter

NOAA FOIA Officer –

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Thank you,

Sheri Pais

Sheri Pais | **Perkins Coie LLP**
SENIOR PARALEGAL
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Animal Welfare Institute

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December 4, 2017

VIA OVERNIGHT MAIL AND EMAIL

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
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fwhq_foia@fws.gov

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AWI requested all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

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Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

From:	Georgia Hancock
To:	FOIA@noaa.gov; fwhq_foia@fws.gov; mmc@mmc.gov
Cc:	Baur, Don (WDC); Naomi Rose
Subject:	AWI FOIA to NOAA, FWS, MMC 9-29-2017
Attachments:	NOAA NMFS FWS MMC FOIA 9.29.17.pdf

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock
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Animal Welfare Institute

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awionline.org phone: (202) 337-2332 fax: (202) 446-2131

September 29, 2017

VIA OVERNIGHT MAIL AND EMAIL

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

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
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Falls Church, VA 22041
fwhq_foia@fws.gov

Michael Gosliner
Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, Maryland 20814
mmc@mmc.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 10, 2018 3:26 PM
To: Mary O'Brien - NOAA Federal; Samuel Dixon - NOAA Affiliate
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: Draft IR1 for AWI request (DOC-NOAA-2017-001985)
Attachments: IR1 FAL under CIO Letterhead.docx

Hey Guys,

(b)(5) [redacted].

(b)(5) [redacted].

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

(b)(5)

(b)(5)

(b)(5)

DEPARTMENT OF COMMERCE
UNITED STATES OF AMERICA

From: Mary O'Brien - NOAA Federal <mary.obrien@noaa.gov>
Sent: Wednesday, January 10, 2018 3:45 PM
To: Mark Graff - NOAA Federal; Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: Fwd: FOIA Assignment for DOC-NOAA-2017-001985
Attachments: NOAA NMFS FWS MMC FOIA 9.29.17.pdf; 2018.01.08 AWI Complaint.pdf; 17-1985 FOIA Search Log.docx

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

---------- Forwarded message ----------
From: **Ellen Sebastian - NOAA Federal** <ellen.sebastian@noaa.gov>
Date: Wed, Jan 10, 2018 at 3:23 PM
Subject: Fwd: FOIA Assignment for DOC-NOAA-2017-001985
To: Amy Sloan <amy.sloan@noaa.gov>
Cc: Courtney Smith - NOAA Affiliate <courtney.smith@noaa.gov>, Jennifer Skidmore - NOAA Federal <jennifer.skidmore@noaa.gov>, NMFS HQ PR FOIA Requests - NOAA Service Account <NMFS.HQ.PR.FOIA@noaa.gov>, Peaches Hodge-Tonic - NOAA Federal <peaches.hodge-tonic@noaa.gov>, mary.obrien@noaa.gov

Hi All,

Please see attached **FOIA request** designated as **DOC-NOAA-2017-1985 assigned to our office today**. (b)(5) [redacted]

[redacted]

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

[redacted]

(b)(5) [redacted]

Please contact me if you have questions regarding this correspondence.

Thanks for your cooperation moving this foward!

~ Ellen Sebastian (907) 586-7152

---------- Forwarded message ----------
From: **foia@regulations.gov** <foia@regulations.gov>
Date: Wed, Jan 10, 2018 at 10:59 AM
Subject: FOIA Assignment for DOC-NOAA-2017-001985
To: "ellen.sebastian@noaa.gov" <ellen.sebastian@noaa.gov>

You have been assigned to the FOIA request DOC-NOAA-2017-001985. Additional details for this request are as follows:

- Assigned By: Samuel B. Dixon
- Request Tracking Number: DOC-NOAA-2017-001985
- Due Date: 02/08/2018
- Requester: Georgia Hancock
- Request Track: Complex
- Short Description: N/A
- Long Description: Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, et seq., and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774). Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.
- Assigned Comments: Hi Ellen, this is a PR FOIA, not sure if I should assign to you or not while Peaches is out.

--
Ellen Sebastian
FOIA & Records Coordinator
Information Services Division
NOAA Fisheries, Alaska Region
(907) 586-7152

Today is a good day for a good day!

FOIA Search Log

FOIA Number [20XX-XXXXXX]

Component where documents originated:	Full name of person providing potentially responsive documents:	Locations searched: (e.g., shared drive, hard drive, database, physical location)	Search terms used:

Date Searched: _____

Signature: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE 900 Pennsylvania Avenue, SE Washington, D.C. 20003, Plaintiff, v. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, 1401 Constitution Avenue, NW, Room 5128 Washington, D.C. 20230 and NATIONAL MARINE FISHERIES SERVICE, 1315 East-West Highway Silver Spring, MD 20910, Defendants.	)	Civ. No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Animal Welfare Institute brings this action against defendants National Oceanic and Atmospheric Administration and National Marine Fisheries Service for violations of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

PARTIES

2. Plaintiff Animal Welfare Institute ("AWI") is a 501(c)(3) non-profit organization that seeks to protect animals from human inflicted suffering. In particular, AWI has advocated for the protection of whales and other marine life from life from human activities such as harmful fishing practices, hunting, underwater noise production, and inhumane practices resulting from captive maintenance for purposes of public display and scientific research. AWI is the requester of the records at issue.

3. Defendant National Oceanic and Atmospheric Administration ("NOAA") is an agency of the federal government within the U.S. Department of Commerce that focuses on the conditions of the oceans and the atmosphere, including marine wildlife.

4. Defendant National Marine Fisheries Service ("NMFS") is an agency of the federal government within NOAA that has jurisdiction over whales under the Marine Mammal Protection Act ("MMPA"), 16 U.S.C. §§ 1361 - 1423h, and is in possession of the records requested by AWI.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

FACTS GIVING RISE TO PLAINTIFF'S CLAIM

A. FOIA Requirements

7. The purpose of FOIA is to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865, 869 (D.C. Cir. 2010) (quotations omitted). In enacting FOIA, Congress intended the primary objective of the Act to be the full disclosure of federal agency records so long as information is not exempted by clearly delineated statutory language. *Id.*

8. FOIA establishes a broad right of public access to federal agency records, subject only to nine delineated exemptions. 5 U.S.C. § 552(b). "Each agency, upon any request" for enumerated records must "determine within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such a request" of the "determination and the reasons therefor . . . ." *Id.* § 552(a)(6)(A)(i). A requester "shall be deemed to have exhausted [its]

administrative remedies"—and hence may file suit under the Act's citizen suit provision—"with respect to [a] request if the agency fails to comply with the . . . time limit" set forth in the statute for a substantive response. *Id.* § 552(a)(6)(C)(i).

9. The federal regulations implementing FOIA for NOAA and NMFS are located at 15 C.F.R. § 4.1, *et seq*. 15 C.F.R. § 4.6 codifies the requirement that NOAA/NMFS respond within 20 working days of receiving a FOIA request with a determination of compliance.

B. The Public Interest Need for the Documents Subject to the FOIA Request

10. In 2013, the documentary film *Blackfish* drew public attention to the plight of Tilikum, an orca held in captivity by SeaWorld Parks & Entertainment ("SeaWorld"), and other orcas now maintained in aquariums and theme parks around the world. *Blackfish* set off a strong negative public reaction to SeaWorld and the conditions under which orcas are held in captivity.

11. On March 8, 2016, SeaWorld released a video on its website describing Tilikum's declining health and indicating that he was not expected to survive.

12. Beginning in October 2016, the People for the Ethical Treatment of Animals ("PETA") initiated the first of what would be several meetings and communications with NOAA/NMFS regarding Tilikum. AWI joined this effort by December 2016. In anticipation of Tilikum's death, NOAA/NMFS was presented with a draft legal opinion explaining why the 1992 MMPA permit authorizing the importation of Tilikum requires SeaWorld to submit to NOAA/NMFS the necropsy report and clinical history for Tilikum in the event of his death. In these meetings and communications, and through the draft legal opinion, AWI (with PETA) sought NOAA/NMFS input and comments on the applicability of the necropsy and clinical history permit requirement.

13. In the following months, AWI also presented its views on the necropsy and clinical history requirements of MMPA permits to the other federal agencies with jurisdiction over marine mammals ─ the U.S. Fish and Wildlife Service ("FWS"), the Marine Mammal Commission ("MMC"), and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS").[1]

14. In these agency meetings and communications, AWI repeatedly stressed the importance of necropsy reports and clinical histories for purposes of scientific research, medical care (including for free-ranging, stranded individuals), animal husbandry, and public education, and demonstrated that the benefits resulting from this information applied to whales held both in captivity and in the wild.

15. In these meetings and communications, NOAA/NMFS never took a position on whether SeaWorld had to comply with the necropsy and clinical history requirements of Tilikum's permit.

16. Tilikum died on January 6, 2017 at SeaWorld's Orlando facility. AWI and other animal welfare organizations immediately notified NOAA/NMFS that Tilikum's MMPA permit required SeaWorld to submit the necropsy and clinical history report within 30 days. Based on information and belief, SeaWorld never submitted the necropsy and clinical history report required by the permit to NOAA/NMFS.

17. On March 10, 2017, NOAA/NMFS responded to the animal welfare organizations' notice with an email stating that it was willing to meet to discuss the issue but that it had concluded that the necropsy and clinical history provisions of Tilikum's permit had been

[1] Under the MMPA, NOAA/NMFS has jurisdiction over whales, dolphins and seals. FWS has jurisdiction over polar bears, manatees, walrus and sea otters. 16 U.S.C. § 1362(12)(A). The MMC serves in an independent advisory and oversight role. *Id.* §§ 1401-1407. APHIS jurisdiction is not under the MMPA but applies to marine mammals in certain captive maintenance facilities under the Animal Welfare Act. 7 U.S.C. §§ 2131-2159.

extinguished by amendments to the MMPA in 1994 and that "the legal analysis supporting this determination is exempt from disclosure under the attorney-client privilege, and we will not be discussing it in any detail at the meeting." Thus, after months of effort to engage NOAA/NMFS in a collaborative dialogue regarding the permit requirements for SeaWorld to release Tilikum's health records, AWI and the other organizations had no explanation from NOAA/NMFS for the legal conclusion, contrary to the plain language of the permit, that the necropsy and clinical history requirement did not apply and were told that none would be provided.

18. AWI contacted SeaWorld directly by email on March 25, 2017 asking for voluntary release of Tilikum's records. SeaWorld refused to do so in an April 13, 2017 email. Five animal welfare organizations sent a letter to SeaWorld on August 8, 2017, again asking for voluntary compliance. SeaWorld has not replied and continues to withhold the documents.

19. On July 24, 2017, Tilikum's granddaughter Kyara died at SeaWorld's San Antonio facility. The draft legal opinion previously provided to NOAA/NMFS confirmed that Kyara was covered by the necropsy and clinical history provision of Tilikum's permit.

20. On July 31, 2017, AWI and other animal welfare organizations wrote to NOAA/NMFS asking for enforcement of the necropsy and clinical history provision of Tilikum's permit for Kyara's records. Counsel to AWI submitted a revised version of the draft legal opinion supporting this conclusion to NOAA/NMFS on August 14, 2017.

21. NOAA/NMFS responded on September 7, 2017, simply restating its March 10, 2017 email message that the permit had been extinguished by the 1994 MMPA amendments.

22. On August 15, 2017, Kasatka, an orca held at SeaWorld's San Diego facility, was euthanized due to a bacterial infection. Kasatka's 1978 MMPA permit included a necropsy and clinical history requirement. AWI, and the other organizations promptly requested

NOAA/NMFS to enforce the permit, by letter dated August 25, 2017, and by an updated version of the legal opinion, by letter from counsel dated August 30, 2017.

23. By letter dated October 18, 2017, NOAA/NMFS issued the same response as in its March 10, 2017 email on Tilikum's death and its September 7, 2017 letter on Kyara's death, stating that the necropsy and clinical history requirement in Kasatka's permit had been extinguished. Again, NOAA/NMFS provided no explanation for its legal conclusion.

24. After the death of three SeaWorld orcas over a seven-month period, NOAA/NMFS has refused to release or disclose the legal rationale for its conclusion that SeaWorld can ignore clearly stated permit requirements and withhold information that would shed light on the cause of death and medical condition of these whales during their lives in captivity and benefit science and marine mammal husbandry, stranding response, and medical care. SeaWorld refuses to release the whales' clinical histories or necropsy reports.

C. The AWI FOIA Request

25. By letters sent by email on September 29, 2017, AWI submitted FOIA requests to NOAA/NMFS, FWS, and MMC for all documents from January 1, 2017 to May 1, 2017 regarding NMFS' March 10, 2017 determination that the necropsy and clinical history requirements of Public Display Permit No. 774 for Tilikum were extinguished by the 1994 MMPA amendments. Exhibit 1, Declaration of Donald C. Baur, dated January 8, 2018 ("Baur Decl.") at ¶ 2, Attachment A. On the same date, AWI submitted a FOIA request to APHIS, asking for "all requests that APHIS has submitted since January 1, 1994 under 9 C.F.R. § 3.110(g) requesting necropsy records for marine mammals that have died in captivity, and all necropsy records that APHIS has received in response to those requests."

26. Under FOIA, the deadline for agency response to the requests was October 30, 2017.

27. By letter to AWI dated October 5, 2017, APHIS's FOIA Director confirmed receipt of the FOIA request. The letter identified an anticipated response date of October 30, 2017. On December 8, 2017, APHIS responded to AWI's FOIA request.[2]

28. By voice message on October 4, 2017, the MMC confirmed receipt of AWI's FOIA request. In a letter sent by email, dated December 18, 2017, Michael L. Gosliner, MMC General Counsel, responded to the FOIA request with a partial release of documents. In the MMC response letter, Mr. Gosliner stated:

> I am sympathetic to the position that your organization finds itself in — the responsible agency (NMFS) has given you its legal conclusion that the 1994 amendments to the MMPA extinguished the permit terms and conditions related to necropsies and clinical histories, but has declined to provide you with its rationale for this conclusion. I can see where that agency would not want to share its draft legal analysis outside of the government, but once a conclusion has been reached, its final position no longer is pre-decisional.[3]

The MMC also stated that it could not release its own documents that would shed light on the NOAA/NMFS legal position without concurrence from NOAA/NMFS.[4]

---

[2] APHIS confirmed that, since 1994, it has not required licensees to submit necropsy reports for any marine mammals. As a result, it had no documents to release.

[3] The MMC's FOIA response indicates that NOAA/NMFS had not completed its consultation with its sister agencies on the legal question at the time it announced its conclusion on March 10, 2017.

[4] The MMC request revealed the limited nature of the AWI request, by identifying only nine responsive documents withheld based on the NOAA/NMFS position. The MMC letter also confirmed that it had coordinated its response "with the other agencies," indicating that NOAA/NMFS is aware of the FOIA request.

29. By email on September 29, 2017, FWS's Headquarters FOIA Office acknowledged receipt of the FOIA request. The email stated that the request was forwarded to the Division of Management Authority for processing.

30. The initial FOIA request letter to NMFS was confirmed delivered to NOAA/NMFS by AWI email on September 29, 2017. A follow-up letter was also sent by email to NMFS on December 4, 2017, asking for a response by December 15, 2017. Baur Decl. ¶ 3, Attachment B. Finally, on December 22, 2017, a copy of the December 4 letter was sent again by email, with a specific request that NMFS acknowledge receipt. *Id.* ¶ 4, Attachment C.

31. As of the date of this complaint, NOAA/NMFS has never even acknowledged receipt of the September 29, 2017 request, the December 4, 2017 follow-up letter, or the December 22, 2017 email confirmation request.

32. To date, more than three months after AWI's initial letter, and more than two months after the statutory deadline, NOAA/NMFS has not responded in any way to the September 29, 2017 AWI FOIA request. Nor has the Agency provided AWI with any explanation for the ongoing delay. The other agencies have either responded in full (APHIS and MMC) or acknowledged receipt and confirmed that review is underway (FWS).

CLAIM FOR RELIEF

33. AWI has a statutory right to the requested records. NOAA/NMFS, in violation of FOIA and AWI's rights under FOIA, has failed to provide the records, or any substantive determination regarding them, by the mandatory deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

REQUESTED RELIEF

34. AWI respectfully requests that the Court grant the following relief:

a. Declare that NMFS is in violation of FOIA;

b. Enjoin NMFS from continuing to withhold the requested records and order NMFS immediately to release the records in full to AWI;

c. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F)(i) that the "circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding . . . .";

d. Award Plaintiff its attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);

e. Award any other relief this Court finds just and proper.

Dated this 9th day of January, 2018

Respectfully submitted,

/s/Donald C. Baur

Donald C. Baur
D.C. Bar No. 393621
Perkins Coie LLP
700 13th Street, NW, Suite 600
Washington, D.C. 20005-3960
(202) 654-6200
DBaur@perkinscoie.com

Sunny Tsou
(*pro hac vice* application pending)
Perkins Coie LLP
505 Howard Street
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Counsel for Plaintiff

Animal Welfare Institute
900 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

September 29, 2017

VIA OVERNIGHT MAIL AND EMAIL

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

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Michael Gosliner
Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, Maryland 20814
mmc@mmc.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

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Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, January 11, 2018 3:02 PM
To: Bogomolny, Michael (Federal)
Cc: Lola Stith - NOAA Affiliate; Robert Hogan; Robert Swisher - NOAA Federal; Ed Kearns - NOAA Federal; Mary O'Brien - NOAA Federal
Subject: New Litigation: AWI v. NOAA
Attachments: Original Request.pdf; 2018.01.08 AWI Complaint.pdf

Hello Bogo,

I wasn't sure if you'd seen this yet, or if we've been served. (b)(5) [redacted]. I'm attaching a copy of the Complaint and original request for your reference.

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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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE 900 Pennsylvania Avenue, SE Washington, D.C. 20003, Plaintiff, v. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, 1401 Constitution Avenue, NW, Room 5128 Washington, D.C. 20230 and NATIONAL MARINE FISHERIES SERVICE, 1315 East-West Highway Silver Spring, MD 20910, Defendants.	)	Civ. No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Animal Welfare Institute brings this action against defendants National Oceanic and Atmospheric Administration and National Marine Fisheries Service for violations of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

PARTIES

2. Plaintiff Animal Welfare Institute ("AWI") is a 501(c)(3) non-profit organization that seeks to protect animals from human inflicted suffering. In particular, AWI has advocated for the protection of whales and other marine life from life from human activities such as harmful fishing practices, hunting, underwater noise production, and inhumane practices resulting from captive maintenance for purposes of public display and scientific research. AWI is the requester of the records at issue.

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5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

FACTS GIVING RISE TO PLAINTIFF'S CLAIM

A. FOIA Requirements

7. The purpose of FOIA is to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865, 869 (D.C. Cir. 2010) (quotations omitted). In enacting FOIA, Congress intended the primary objective of the Act to be the full disclosure of federal agency records so long as information is not exempted by clearly delineated statutory language. *Id.*

8. FOIA establishes a broad right of public access to federal agency records, subject only to nine delineated exemptions. 5 U.S.C. § 552(b). "Each agency, upon any request" for enumerated records must "determine within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such a request" of the "determination and the reasons therefor . . . ." *Id.* § 552(a)(6)(A)(i). A requester "shall be deemed to have exhausted [its]

administrative remedies"—and hence may file suit under the Act's citizen suit provision—"with respect to [a] request if the agency fails to comply with the . . . time limit" set forth in the statute for a substantive response. *Id.* § 552(a)(6)(C)(i).

9. The federal regulations implementing FOIA for NOAA and NMFS are located at 15 C.F.R. § 4.1, *et seq*. 15 C.F.R. § 4.6 codifies the requirement that NOAA/NMFS respond within 20 working days of receiving a FOIA request with a determination of compliance.

B. The Public Interest Need for the Documents Subject to the FOIA Request

10. In 2013, the documentary film *Blackfish* drew public attention to the plight of Tilikum, an orca held in captivity by SeaWorld Parks & Entertainment ("SeaWorld"), and other orcas now maintained in aquariums and theme parks around the world. *Blackfish* set off a strong negative public reaction to SeaWorld and the conditions under which orcas are held in captivity.

11. On March 8, 2016, SeaWorld released a video on its website describing Tilikum's declining health and indicating that he was not expected to survive.

12. Beginning in October 2016, the People for the Ethical Treatment of Animals ("PETA") initiated the first of what would be several meetings and communications with NOAA/NMFS regarding Tilikum. AWI joined this effort by December 2016. In anticipation of Tilikum's death, NOAA/NMFS was presented with a draft legal opinion explaining why the 1992 MMPA permit authorizing the importation of Tilikum requires SeaWorld to submit to NOAA/NMFS the necropsy report and clinical history for Tilikum in the event of his death. In these meetings and communications, and through the draft legal opinion, AWI (with PETA) sought NOAA/NMFS input and comments on the applicability of the necropsy and clinical history permit requirement.

13. In the following months, AWI also presented its views on the necropsy and clinical history requirements of MMPA permits to the other federal agencies with jurisdiction over marine mammals ─ the U.S. Fish and Wildlife Service ("FWS"), the Marine Mammal Commission ("MMC"), and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS").[1]

14. In these agency meetings and communications, AWI repeatedly stressed the importance of necropsy reports and clinical histories for purposes of scientific research, medical care (including for free-ranging, stranded individuals), animal husbandry, and public education, and demonstrated that the benefits resulting from this information applied to whales held both in captivity and in the wild.

15. In these meetings and communications, NOAA/NMFS never took a position on whether SeaWorld had to comply with the necropsy and clinical history requirements of Tilikum's permit.

16. Tilikum died on January 6, 2017 at SeaWorld's Orlando facility. AWI and other animal welfare organizations immediately notified NOAA/NMFS that Tilikum's MMPA permit required SeaWorld to submit the necropsy and clinical history report within 30 days. Based on information and belief, SeaWorld never submitted the necropsy and clinical history report required by the permit to NOAA/NMFS.

17. On March 10, 2017, NOAA/NMFS responded to the animal welfare organizations' notice with an email stating that it was willing to meet to discuss the issue but that it had concluded that the necropsy and clinical history provisions of Tilikum's permit had been

[1] Under the MMPA, NOAA/NMFS has jurisdiction over whales, dolphins and seals. FWS has jurisdiction over polar bears, manatees, walrus and sea otters. 16 U.S.C. § 1362(12)(A). The MMC serves in an independent advisory and oversight role. *Id.* §§ 1401-1407. APHIS jurisdiction is not under the MMPA but applies to marine mammals in certain captive maintenance facilities under the Animal Welfare Act. 7 U.S.C. §§ 2131-2159.

extinguished by amendments to the MMPA in 1994 and that "the legal analysis supporting this determination is exempt from disclosure under the attorney-client privilege, and we will not be discussing it in any detail at the meeting." Thus, after months of effort to engage NOAA/NMFS in a collaborative dialogue regarding the permit requirements for SeaWorld to release Tilikum's health records, AWI and the other organizations had no explanation from NOAA/NMFS for the legal conclusion, contrary to the plain language of the permit, that the necropsy and clinical history requirement did not apply and were told that none would be provided.

18. AWI contacted SeaWorld directly by email on March 25, 2017 asking for voluntary release of Tilikum's records. SeaWorld refused to do so in an April 13, 2017 email. Five animal welfare organizations sent a letter to SeaWorld on August 8, 2017, again asking for voluntary compliance. SeaWorld has not replied and continues to withhold the documents.

19. On July 24, 2017, Tilikum's granddaughter Kyara died at SeaWorld's San Antonio facility. The draft legal opinion previously provided to NOAA/NMFS confirmed that Kyara was covered by the necropsy and clinical history provision of Tilikum's permit.

20. On July 31, 2017, AWI and other animal welfare organizations wrote to NOAA/NMFS asking for enforcement of the necropsy and clinical history provision of Tilikum's permit for Kyara's records. Counsel to AWI submitted a revised version of the draft legal opinion supporting this conclusion to NOAA/NMFS on August 14, 2017.

21. NOAA/NMFS responded on September 7, 2017, simply restating its March 10, 2017 email message that the permit had been extinguished by the 1994 MMPA amendments.

22. On August 15, 2017, Kasatka, an orca held at SeaWorld's San Diego facility, was euthanized due to a bacterial infection. Kasatka's 1978 MMPA permit included a necropsy and clinical history requirement. AWI, and the other organizations promptly requested

NOAA/NMFS to enforce the permit, by letter dated August 25, 2017, and by an updated version of the legal opinion, by letter from counsel dated August 30, 2017.

23. By letter dated October 18, 2017, NOAA/NMFS issued the same response as in its March 10, 2017 email on Tilikum's death and its September 7, 2017 letter on Kyara's death, stating that the necropsy and clinical history requirement in Kasatka's permit had been extinguished. Again, NOAA/NMFS provided no explanation for its legal conclusion.

24. After the death of three SeaWorld orcas over a seven-month period, NOAA/NMFS has refused to release or disclose the legal rationale for its conclusion that SeaWorld can ignore clearly stated permit requirements and withhold information that would shed light on the cause of death and medical condition of these whales during their lives in captivity and benefit science and marine mammal husbandry, stranding response, and medical care. SeaWorld refuses to release the whales' clinical histories or necropsy reports.

C. The AWI FOIA Request

25. By letters sent by email on September 29, 2017, AWI submitted FOIA requests to NOAA/NMFS, FWS, and MMC for all documents from January 1, 2017 to May 1, 2017 regarding NMFS' March 10, 2017 determination that the necropsy and clinical history requirements of Public Display Permit No. 774 for Tilikum were extinguished by the 1994 MMPA amendments. Exhibit 1, Declaration of Donald C. Baur, dated January 8, 2018 ("Baur Decl.") at ¶ 2, Attachment A. On the same date, AWI submitted a FOIA request to APHIS, asking for "all requests that APHIS has submitted since January 1, 1994 under 9 C.F.R. § 3.110(g) requesting necropsy records for marine mammals that have died in captivity, and all necropsy records that APHIS has received in response to those requests."

26. Under FOIA, the deadline for agency response to the requests was October 30, 2017.

27. By letter to AWI dated October 5, 2017, APHIS's FOIA Director confirmed receipt of the FOIA request. The letter identified an anticipated response date of October 30, 2017. On December 8, 2017, APHIS responded to AWI's FOIA request.[2]

28. By voice message on October 4, 2017, the MMC confirmed receipt of AWI's FOIA request. In a letter sent by email, dated December 18, 2017, Michael L. Gosliner, MMC General Counsel, responded to the FOIA request with a partial release of documents. In the MMC response letter, Mr. Gosliner stated:

> I am sympathetic to the position that your organization finds itself in — the responsible agency (NMFS) has given you its legal conclusion that the 1994 amendments to the MMPA extinguished the permit terms and conditions related to necropsies and clinical histories, but has declined to provide you with its rationale for this conclusion. I can see where that agency would not want to share its draft legal analysis outside of the government, but once a conclusion has been reached, its final position no longer is pre-decisional.[3]

The MMC also stated that it could not release its own documents that would shed light on the NOAA/NMFS legal position without concurrence from NOAA/NMFS.[4]

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[2] APHIS confirmed that, since 1994, it has not required licensees to submit necropsy reports for any marine mammals. As a result, it had no documents to release.

[3] The MMC's FOIA response indicates that NOAA/NMFS had not completed its consultation with its sister agencies on the legal question at the time it announced its conclusion on March 10, 2017.

[4] The MMC request revealed the limited nature of the AWI request, by identifying only nine responsive documents withheld based on the NOAA/NMFS position. The MMC letter also confirmed that it had coordinated its response "with the other agencies," indicating that NOAA/NMFS is aware of the FOIA request.

29. By email on September 29, 2017, FWS's Headquarters FOIA Office acknowledged receipt of the FOIA request. The email stated that the request was forwarded to the Division of Management Authority for processing.

30. The initial FOIA request letter to NMFS was confirmed delivered to NOAA/NMFS by AWI email on September 29, 2017. A follow-up letter was also sent by email to NMFS on December 4, 2017, asking for a response by December 15, 2017. Baur Decl. ¶ 3, Attachment B. Finally, on December 22, 2017, a copy of the December 4 letter was sent again by email, with a specific request that NMFS acknowledge receipt. *Id.* ¶ 4, Attachment C.

31. As of the date of this complaint, NOAA/NMFS has never even acknowledged receipt of the September 29, 2017 request, the December 4, 2017 follow-up letter, or the December 22, 2017 email confirmation request.

32. To date, more than three months after AWI's initial letter, and more than two months after the statutory deadline, NOAA/NMFS has not responded in any way to the September 29, 2017 AWI FOIA request. Nor has the Agency provided AWI with any explanation for the ongoing delay. The other agencies have either responded in full (APHIS and MMC) or acknowledged receipt and confirmed that review is underway (FWS).

CLAIM FOR RELIEF

33. AWI has a statutory right to the requested records. NOAA/NMFS, in violation of FOIA and AWI's rights under FOIA, has failed to provide the records, or any substantive determination regarding them, by the mandatory deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

REQUESTED RELIEF

34. AWI respectfully requests that the Court grant the following relief:

a. Declare that NMFS is in violation of FOIA;

b. Enjoin NMFS from continuing to withhold the requested records and order NMFS immediately to release the records in full to AWI;

c. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F)(i) that the "circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding . . . .";

d. Award Plaintiff its attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);

e. Award any other relief this Court finds just and proper.

Dated this 9th day of January, 2018

Respectfully submitted,

/s/Donald C. Baur

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Perkins Coie LLP
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(202) 654-6200
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Sunny Tsou
(*pro hac vice* application pending)
Perkins Coie LLP
505 Howard Street
Suite 1000
San Francisco, CA 94105
(415) 344-7000
STsou@perkinscoie.com

Counsel for Plaintiff

From:	Georgia Hancock
To:	FOIA@noaa.gov; fwhq_foia@fws.gov; mmc@mmc.gov
Cc:	Baur, Don (WDC); Naomi Rose
Subject:	AWI FOIA to NOAA, FWS, MMC 9-29-2017
Attachments:	NOAA NMFS FWS MMC FOIA 9.29.17.pdf

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock
Of Counsel
georgia@awionline.org
mobile: 607-329-8638
Animal Welfare Institute
Visit us at awionline.org

Animal Welfare Institute

9903 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

September 29, 2017

VIA OVERNIGHT MAIL AND EMAIL

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

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Michael Gosliner
Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, Maryland 20814
mmc@mmc.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

From: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Sent: Friday, January 12, 2018 2:37 PM
To: Samuel Dixon; Mark Graff - NOAA Federal
Subject: 3rd Interim release 2017-001391
Attachments: Tasker_FAL_DOC-NOAA-2017-001391_InterimRelease3_FULL GRANT.PDF; FAL_DOC-NOAA-2017-001391_InterimRelease3_FULL GRANT.pdf; DOC-NOAA-2017-001391 _NED_2013-2014_Obs Incident&tallyOPEN INCIDENTS.pdf; NED_FOIA 2017-0001391 _Fee-Estimate-Worksheet-1.xlsx; GillT_FOIA 2017-001391 Search Log_200-16b_TE_6yrs_ 20240101.pdf

(b)(5) [redacted]. Please see attached. They are all uploaded but there are too many files there.

Logan signed, full release.

Thanks and have a good weekend.

--
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>

(b)(5)

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Law Enforcement
Headquarters
1315 East West Highway
Silver Spring, MD 20910

January 12, 2018

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

Re: FOIA Request DOC-NOAA-2017-001391

Dear Ms. Mitchell,

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on June 23, 2017, in which you requested:

> *"…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."*

On August 24, 2017, you spoke with the Office of Law Enforcement's FOIA coordinator, Ms. Arlyn Penaranda on the phone discussing the possible approach on disclosing information on open incidents. Per your conversation, you mentioned that releasing a tally of how many open incidents are still pending per Observer Program (Division/Region) will suffice vice providing a spreadsheet with rows fully redacted for all open incidents. Ms. Penaranda sent two emails confirming this approach (August 24, 2017 and September 7, 2017).

In Summary, on November 3, 2017, our office has provided you the list 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 from the Office of Law Enforcement Pacific Island and West Coast (North and South) Divisions. Subsequently, we provided you with the list 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 from the Office of Law Enforcement Southeast Division on November 28, 2017. You were granted full access to those records.

For this third interim release, we are providing you with the summary of all complaints of violence, threats, or harassment against fisheries observers in US fisheries observer programs from the Office of Law Enforcement Northeast Division in calendar year 2013 and 2014. We are also providing you with the tally of how many open incidents are still pending action per Observer Program (Division/Region). You are granted full access to this record, and a copy is enclosed.

To ensure the inclusiveness and accuracy of the responsive records, the National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Law Enforcement is continuing the review the remaining records responsive to your request. When we complete processing them, we will produce all non-exempt portions to you as soon as possible.

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

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

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

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

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

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

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

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

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

Email: ogis@nara.gov

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

If you have questions regarding your request, please contact Arlyn Penaranda at Arlyn.Penaranda@noaa.gov, or call (301) 427-8256 or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,

Logan Gregory

Logan Gregory
Deputy Director
Office of Law Enforcement

FOIA Search Log

FOIA Number [2017-001391]

Component where documents originated:	Full name of person providing potentially responsive documents:	Locations searched: (e.g., shared drive, hard drive, database, physical location)	Search terms used:
(b)(5)			

Date Searched: __2/1/2017_____

Signature: GILL.THUY.B.1380012789 Digitally signed by GILL.THUY.B.1380012789 DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=GILL.THUY.B.1380012789 Date: 2017.06.28 11:16:19 -04'00'

FOIA FEE ESTIMATE WORKSHEET FOR DOC-NOAA-[2017-001391]

SEARCH BY SUBJECT MATTER EXPERT(S) (SME's) Search is defined as a reasonable effort to locate and retrieve information from records maintained in either hard copy or electronic format. Components shall ensure that searches are done in the most efficient and least expensive manner.	**Hourly Salary**	**No. of Hours (if under an hour use .25 increments)**	**Plus .16% overhead**	**Loaded Rate**	**Total**
(b)(5)					

"Commercial" is all costs for search, review, and duplication.
"Favored" (Media, Scientific and Educational) only pays cost for duplication over 100 pages.
"Other" pay costs for search after the first 2 hours, First 100 pages of duplication are free.

All cost for search, review, and duplication must be estimated for the FOIA administrative file in case of appeal or audit.
The agency estimates fees in "good faith" according to criteria in agency regulations. All costs are documented in its FOIAonline case under Admin Cost tab.

January 12, 2018

TASK MEMORANDUM FOR: Lead FOIA Coordinator

FROM: NOAA FOIA Office

SUBJECT: FOIA Request No. DOC-NOAA-2017-000596

I am forwarding a copy of the attached FOIA request for your attention. Please follow this procedure:

1. Note the Time Period and Due Date:

The search period date for this FOIA is **January 1, 2015 through December 31, 2016 or** the start date of actual document search. In order to complete this request within the regulatory time-frame, please respond to the requester by **March 14, 2017.**

2. Attach Completed FOIA Search Log(s) (See "Correspondence Other" in FO for template)

Search every location that could reasonably contain responsive documents.

3. Assemble Potentially Responsive Records:

Note that potentially responsive records may include emails with attachments, final documents, draft documents, maps, shapefiles, raw data, handwritten notes, informal records, and electronic records.

4. Produce Two Document Sets:

Once assembled, produce two document-sets in electronic format. Mark each identical page from each document-set with a uniquely identifiable number. Maintain one set as an original set. The original documents must have no redactions. Maintain the original document set in an accessible repository for six years.

Use the second document-set to apply FOIA exemptions. **Annotate the FOIA exemptions next to, or over, each redaction.**

As you organize the potentially responsive documents, please identify documents or portions of documents that originated with another office, agency, or bureau. Please refer the documents, or request a consultation, as required by FOIA regulations.

5. Summarize the FOIA Review:

Please check **ALL** appropriate boxes.

[x] Interim Response number **3** made on **January 12, 2018**

[ ] Final Response

[ ] The NMFS FOIA office closed this request due to non-payment of fees, or requester's failure to respond to correspondence or,
_____.

[x] Responsive records in our possession can be *released in their entirety*.

[ ] Responsive records in our possession contain segregable exempted material and should be *partially withheld*. The applicable exemption is noted over all drawn redactions.

[ ] Responsive records in our possession contain exempted material and should be *withheld in full.* The applicable exemption is noted over all drawn redactions and/or listed in the response letter and index.

[ ] Responsive records in our possession belonging to another, office, bureau, or federal agency for disclosure determination(s) have been sent to that component for *referral or consultation.*

[ ] Responsive records in our possession are *openly available to the public*.

[ ] A reasonable search was conducted and *no responsive records* were located.

[ ] A foreseeable harm review and analysis was not applicable.

[ ] A foreseeable harm review and analysis was completed for documents containing entirely or partially withheld content. Reviewers determined that disclosure of withheld content would result in harm to an interest protected by the statutory exemption(s), or that disclosure is prohibited by law.

Check **all** exemptions that apply to this foreseeable harm review:

[ ] (b)(2) Agency Personnel Rules/Practices
[ ] (b)(3) Federal Law Prohibits Disclosure
[ ] (b)(4) Business Trade and Financial Information
[ ] (b)(5) Attorney Work Product/Attorney-Client Privilege/Deliberative Process
[ ] (b)(6) Personal Privacy Protection
[ ] (b)(7) Law Enforcement Purposes

6. Verify the following items if a Final Response is being made:

[ ] Admin Cost tab has been completed (or request is being closed as Failure to Pay Fee or Failure to Clarify Scope).

[ ] NMFS FOIA Liaison (or assistant) has been set as first reviewer in the Review tab.

[ ] The responsive records have been uploaded to FOIAonline (FO) and properly coded for release type (UR, RR, etc.).

[ ] Exemptions used have also been noted in FO next to each record (click the pencil icon).

[ ] A FORDEM or Bulk Upload memo is being used in place of the responsive records and has been uploaded to both the Records tab and Other Correspondence.

[ ] Search Logs have been properly filled out, signed, and uploaded to Other Correspondence (if search was conducted).

[ ] The Final Action Letter (FAL) contains an accurate count of the records being released and describes all exemption(s) being applied to the records.

[ ] Draft FAL is uploaded to Other Correspondence.

7. Obtain Signatures to Verify Review:

PENARANDA.ARLYN.EVANGELISTA.1177159472 Digitally signed by PENARANDA.ARLYN.EVANGELISTA.1177159472 Date: 2018.01.12 12:52:59 -05'00'

Lead Coordinator | Date

GREGORY.ROBERT.L.1365898975 Digitally signed by GREGORY.ROBERT.L.1365898975 Date: 2018.01.12 14:00:57 -05'00'

RO/LO Senior Official | Date

*General Counsel | Date

[ ] GC was consulted on this response, but did not review documents. GC has no legal objection assuming the information contained in this form is accurate.

[ ] GC was consulted and reviewed certain documents containing possible redactions and withholdings. GC has no legal objection to the agency's response for those specific documents.

*** NOTE:** *GC review is necessary for any FOIA release that is in litigation or is related to a request in litigation. However, GC signature is not necessary for full releases that do not involve litigation or the threat of litigation.*

From: Karen Robin - NOAA Federal <karen.robin@noaa.gov>
Sent: Tuesday, January 16, 2018 3:58 PM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: RE: Greenwood_DOC-OS-2017-001648: Follow-up
Attachments: NOAA_DOC-OS-2017-001648 (DOC task memo).docx

Hi Mark,
FYI, (b)(5) [redacted]
Please let me know if you need anything else from me to support this request.
Thanks,
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: Monday, January 08, 2018 11:58 AM
To: Lola Stith - NOAA Affiliate; Karen Robin - NOAA Federal
Subject: Fwd: Greenwood_DOC-OS-2017-001648: Follow-up

Hey Guys--

Do we have a thumb on the pulse of this one and the expected ETA on a response to DOC?

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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---------- Forwarded message ----------
From: **Khalid, Sulma (Contractor)** <SKhalid@doc.gov>
Date: Mon, Jan 8, 2018 at 11:29 AM
Subject: Greenwood_DOC-OS-2017-001648: Follow-up
To: "Boston, Louis" <Louis.Boston@uspto.gov>, "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>

Good Afternoon

I am writing to follow up with you regarding FOIA request DOC-OS-2017-0001648. On August 4th, 2017, PTO and NOAA were tasked with providing OPOG with records responsive to the following request:

1) Please state the number of staff that joined your department in each of the following months. Please provide a breakdown between political and non-political appointments, and for non-political appointments break the number of joiners down by their civil service grade.

2) Please state the number of staff that left your department in each of the following months. Please provide a breakdown between political and non-political appointments, and for non-political appointments break the number of leavers down by their civil service grade.

On November 15, your Bureau was retasked in FOIAOnline to provide a response by November 30, 2017. Upon review of this case, it appears that OPOG never received records in response to the tasker, or a signed tasker from PTO or NOAA. I have attached a copy of the original tasker here for your convenience. If you have any questions or would like to discuss further, please feel free to contact me at skhalid@doc.gov or x7432.

As this request is now over 100 days old, your prompt attention to this matter is greatly appreciated.

Regards,

Sulma Khalid

FOIA/PA Analyst (Contractor)

U.S. Department of Commerce

Office of Privacy and Open Government

Phone Number: (202) 482-7432

Email: skhalid@doc.gov

UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

November 15, 2017

MEMORANDUM FOR: Vernon E. Curry, CEN
Pam Moulder, ESA
Catherine Fletcher, NIST
Wayne Strickland, NTIS
Mark Graff, NOAA
Jamie Boston, PTO
Jamie Boston, PTO
Jennifer Piel, OIG

FROM: Michael J. Toland, Ph.D.
Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT: FOIA Request George Greenwood
DOC-OS-2017-001648

The U.S. Department of Commerce's FOIA Office, Office of Privacy and Open Government, received a request seeking:

1) Please state the number of staff that joined your department in each of the following months. Please provide a breakdown between political and non-political appointments, and for non-political appointments break the number of joiners down by their civil service grade.

2) Please state the number of staff that left your department in each of the following months. Please provide a breakdown between political and non-political appointments, and for non-political appointments break the number of leavers down by their civil service grade.

3) Please provide the above records pertaining to the following years:

i) December 2000	viii) December 2008	xv) December 2016
ii) January 2001	ix) January 2009	xvi) January 2017
iii) February 2001	ix) January 2009	xvii) February 2017
iv) March 2001	xi) March 2009	xviii) March 2017
v) April 2001	xii) April 2009	xix) April 2017
vi) May 2001	xiii) May 2009	xx) May 2017
vii) June 2001	xiv) June 2009	xxi) June 2017

***Please note that the FOIA does not require agencies to create records in response to a FOIA request. Therefore, if you do not maintain the information requested in records already in existence, you may respond to this tasker with a "no records" response.**

I am sending this FOIA request to you for your attention, since your office has been identified as possibly having records that may be responsive to the request. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
    - You must search every place that could reasonably be expected to have responsive documents.
    - The date range for records that may be responsive to this request is:

i) December 2000	viii) December 2008	xv) December 2016
ii) January 2001	ix) January 2009	xvi) January 2017
iii) February 2001	ix) January 2009	xvii) February 2017
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v) April 2001	xii) April 2009	xix) April 2017
vi) May 2001	xiii) May 2009	xx) May 2017
vii) June 2001	xiv) June 2009	xxi) June 2017

- If you identify any records:
    - Please provide electronic copies of the records to me within ten (10) business days of the date of this letter—on or before November 30, 2017.
        - Upload documents in FOIAonline following the instructions in the attachment entitled "Instructions for uploading documents into FOIAonline."
    - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
        - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
        - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at skhalid@doc.gov.
    - Sign and date the attached Certification of Search.
    - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
    - Check the box "My Office has found no responsive document" on the attached Certification of Search.
    - Sign and date the Certification of Search.
    - Return the completed Certification of Search to my office.

Attachments
1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions

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Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releasable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for "Title" of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleasable; and RU-Redacted-Unreleasable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for "Title:" 15 documents refer to NTIA.

Certification of Search for FOIA Request No. DOC-OS-2017-001648

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

☐ Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.

☐ My office has found no responsive documents.

☐ All disclosure determinations have been made by the Commerce Office that originated or has control of the documents

☐ 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 material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm: _____.

☐ Interim response ☐ Final response

_____ _____

Signature (Senior Official) Date

FOIA Exemptions

Exemption 1: classified national defense and foreign relations information;

Exemption 2: internal agency personnel rules and practices;

Exemption 3: information that is prohibited from disclosure by another federal law;

Exemption 4: trade secrets and other confidential or privileged commercial or financial information;

Exemption 5: inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

Exemption 6: information involving matters of personal privacy;

Exemption 7: records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

Exemption 8: information relating to the supervision of financial institutions; and

Exemption 9: geological information on wells.

From: Karen Robin - NOAA Federal <karen.robin@noaa.gov>
Sent: Tuesday, January 16, 2018 6:22 PM
To: Mark Graff - NOAA Federal
Subject: DOC-NOAA-2017-001760 (Final referral Ltrs review)
Attachments: 2017-001760 - Referral to NFC.docx; 2017-001760 - Ltr to requester (referring to OPM & NFC).docx; 2017-001760 - Referral to OPM.docx

Here are my final draft letter (b)(5) [redacted]

Thanks,
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: Monday, September 18, 2017 10:42 AM
To: Karen Robin - NOAA Federal
Subject: Re: DOC-NOAA-2017-001760 (Taylor's files via atty)

(b)(5) [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, Sep 18, 2017 at 9:38 AM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Thanks for reviewing this plan.

(b)(5) [redacted]

- [redacted]

- [redacted]

[redacted]

[redacted]

[redacted]

[redacted]?

Thanks,

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: Monday, September 18, 2017 7:29 AM
To: Karen Robin - NOAA Federal
Subject: Re: DOC-NOAA-2017-001760 (Taylor's files via atty)

(b)(5) [redacted].

Otherwise--looks good.

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 Thu, Sep 14, 2017 at 3:40 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Mark,

Further on this request, please review/repair my plan, which is in this order:

(b)(5) [redacted]

[redacted].

Thanks,
Karen

—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD ● (301) 713-6361

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(b)(5)

(b)(5)

(b)(5)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 17, 2018 9:43 AM
To: Khalid, Sulma (Contractor)
Subject: Fwd: ACTION REQUIRED: Task for Request Greenwood_DOC-OS-2017-001648 (REVIEW/SIGN)
Attachments: NOAA_DOC-OS-2017-001648.docx

Hello Sulma,

In follow up to your prior message, NOAA will be closing out this tasker shortly. Thanks!

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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---------- Forwarded message ----------
From: **Lola Stith - NOAA Affiliate** <lola.m.stith@noaa.gov>
Date: Wed, Jan 17, 2018 at 9:16 AM
Subject: ACTION REQUIRED: Task for Request Greenwood_DOC-OS-2017-001648 (REVIEW/SIGN)
To: Mark Graff - NOAA Affiliate <mark.graff@noaa.gov>

Hi Mark (b)(5) [redacted]

[redacted].

R/
Lola

--
Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [redacted]
lola.m.stith@noaa.gov

UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

November 15, 2017

MEMORANDUM FOR: Vernon E. Curry, CEN
Pam Moulder, ESA
Catherine Fletcher, NIST
Wayne Strickland, NTIS
Mark Graff, NOAA
Jamie Boston, PTO
Jamie Boston, PTO
Jennifer Piel, OIG

FROM: Michael J. Toland, Ph.D.
Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT: FOIA Request George Greenwood
DOC-OS-2017-001648

The U.S. Department of Commerce's FOIA Office, Office of Privacy and Open Government, received a request seeking:

1) Please state the number of staff that joined your department in each of the following months. Please provide a breakdown between political and non-political appointments, and for non-political appointments break the number of joiners down by their civil service grade.

2) Please state the number of staff that left your department in each of the following months. Please provide a breakdown between political and non-political appointments, and for non-political appointments break the number of leavers down by their civil service grade.

3) Please provide the above records pertaining to the following years:

i) December 2000	viii) December 2008	xv) December 2016
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vii) June 2001	xiv) June 2009	xxi) June 2017

- If you identify any records:
    - Please provide electronic copies of the records to me within ten (10) business days of the date of this letter—on or before November 30, 2017.
        - Upload documents in FOIAonline following the instructions in the attachment entitled "Instructions for uploading documents into FOIAonline."
    - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
        - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
        - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at skhalid@doc.gov.
    - Sign and date the attached Certification of Search.
    - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
    - Check the box "My Office has found no responsive document" on the attached Certification of Search.
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2. Certification of Search
3. FOIA Exemptions

Instructions for uploading documents into FOIAonline

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- The format to be used for "Title" of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleasable; and RU-Redacted-Unreleasable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for "Title:" 15 documents refer to NTIA.

Certification of Search for FOIA Request No. DOC-OS-2017-001648

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

X Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.

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☐ My office has found no responsive documents.

☐ All disclosure determinations have been made by the Commerce Office that originated or has control of the documents

☐ 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 material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm: _____.

☐ Interim response X Final response

_____ _____

Signature (Senior Official) Date

FOIA Exemptions

Exemption 1: classified national defense and foreign relations information;

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Exemption 3: information that is prohibited from disclosure by another federal law;

Exemption 4: trade secrets and other confidential or privileged commercial or financial information;

Exemption 5: inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

Exemption 6: information involving matters of personal privacy;

Exemption 7: records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

Exemption 8: information relating to the supervision of financial institutions; and

Exemption 9: geological information on wells.

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 17, 2018 9:42 AM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Task for Request Greenwood_DOC-OS-2017-001648 (REVIEW/SIGN)
Attachments: NOAA_DOC-OS-2017-001648 mhg.pdf

Perfect--glad this one's getting closed out. Way to go Karen!

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 Wed, Jan 17, 2018 at 9:16 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

> Hi Mark (b)(5) [redacted]
>
> [redacted].
>
> R/
> Lola
>
> --
> Lola Stith
> Contractor - The Ambit Group, LLC
> NOAA Office of the Chief Information Officer (OCIO)
> (c (b)(6) [redacted]
> lola.m.stith@noaa.gov

UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

November 15, 2017

MEMORANDUM FOR: Vernon E. Curry, CEN
Pam Moulder, ESA
Catherine Fletcher, NIST
Wayne Strickland, NTIS
Mark Graff, NOAA
Jamie Boston, PTO
Jamie Boston, PTO
Jennifer Piel, OIG

FROM: Michael J. Toland, Ph.D.
Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT: FOIA Request George Greenwood
DOC-OS-2017-001648

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v) April 2001	xii) April 2009	xix) April 2017
vi) May 2001	xiii) May 2009	xx) May 2017
vii) June 2001	xiv) June 2009	xxi) June 2017

- If you identify any records:
    - Please provide electronic copies of the records to me within ten (10) business days of the date of this letter—on or before November 30, 2017.
        - Upload documents in FOIAonline following the instructions in the attachment entitled "Instructions for uploading documents into FOIAonline."
    - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
        - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
        - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at skhalid@doc.gov.
    - Sign and date the attached Certification of Search.
    - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
    - Check the box "My Office has found no responsive document" on the attached Certification of Search.
    - Sign and date the Certification of Search.
    - Return the completed Certification of Search to my office.

Attachments
1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions

Instructions for uploading documents into FOIAonline

A signed Certification of Search should be uploaded separately in Case File/Correspondence/Other. Only the Certification of Search signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releasable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for "Title" of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleasable; and RU-Redacted-Unreleasable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for "Title:" 15 documents refer to NTIA.

Certification of Search for FOIA Request No. DOC-OS-2017-001648

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

X Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.

Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.

Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.

Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.

My office has found no responsive documents.

All disclosure determinations have been made by the Commerce Office that originated or has control of the documents

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 material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm: _____.

Interim response X Final response

GRAFF.MARK.HYRUM.1514447892

Digitally signed by GRAFF.MARK.HYRUM.1514447892
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892
Date: 2018.01.17 09:41:19 -05'00'

Signature (Senior Official) Date

FOIA Exemptions

Exemption 1: classified national defense and foreign relations information;

Exemption 2: internal agency personnel rules and practices;

Exemption 3: information that is prohibited from disclosure by another federal law;

Exemption 4: trade secrets and other confidential or privileged commercial or financial information;

Exemption 5: inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

Exemption 6: information involving matters of personal privacy;

Exemption 7: records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

Exemption 8: information relating to the supervision of financial institutions; and

Exemption 9: geological information on wells.

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 17, 2018 11:53 AM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Task for Request DOC-OS-2018-000098 (REVIEW/SIGN)
Attachments: Kick_DOC-2018-000098_Search Tasker for NOAA mhg.pdf

Looks good--here it is signed.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [redacted] (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 Wed, Jan 17, 2018 at 9:21 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Mark (b)(5) [redacted]

[redacted].

R/

--
Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [redacted]
lola.m.stith@noaa.gov

UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

October 25, 2017

MEMORANDUM FOR: Mark Graff, NOAA

FROM: Michael J. Toland, Ph.D.
Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT: FOIA Request Russ Kick
DOC-OS-2017-000098

The U.S. Department of Commerce's FOIA Office, Office of Privacy and Open Government, received the following request:

> "Regarding the 2017 Federal Employee Viewpoint Survey (FEVS), I hereby request the following reports from the National Oceanic and Atmospheric Administration (NOAA):
>
> 1. 1st Level Sub-agency Report (the main report for NOAA)
>
> 2. 2nd Level Sub-agency Comparison Report (compares results of each division within the NOAA)
>
> 3. 2nd Level Sub-agency Reports for:
> a. National Marine Fisheries Service (main report for NMFS)
> b. National Weather Service NWS (main report for NWS)
>
> For each report, I request the full report, including all appendices and attachments. Further, I request that these files be sent in any digital formats in which they exist (PDF, Excel, etc.)"

I am sending this FOIA request to you for your attention, since your office has been identified as possibly having records that may be responsive to the request. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
  - You must search every place that could reasonably be expected to have responsive documents.
  - The date range for records that may be responsive to this request pertains to the 2017 Federal Employee Viewpoint Survey only.
- If you identify any records:
  - Please provide electronic copies of the records to me within ten (10) business days of the date of this letter—on or before <u>November 8, 2017</u>.
    - Upload documents in FOIAonline following the instructions in the attachment entitled "Instructions for uploading documents into FOIAonline."

    - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
        - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
        - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at skhalid@doc.gov.
    - Sign and date the attached Certification of Search.
    - Return the completed Certification of Search along with the responsive records to my office.
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2. Certification of Search
3. FOIA Exemptions

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- The format to be used for "Title" of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleasable; and RU-Redacted-Unreleasable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for "Title:" 15 documents refer to NTIA.

Certification of Search for FOIA Request No. DOC-OS-2018-000098

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

X Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.

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☐ My office has found no responsive documents.

☐ All disclosure determinations have been made by the Commerce Office that originated or has control of the documents

☐ 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 material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm: _____.

☐ Interim response X Final response

GRAFF.MARK.HYRUM.1514447892

Digitally signed by GRAFF.MARK.HYRUM.1514447892
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892
Date: 2018.01.17 11:52:31 -05'00'

Signature (Senior Official) Date

FOIA Exemptions

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Exemption 2: internal agency personnel rules and practices;

Exemption 3: information that is prohibited from disclosure by another federal law;

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> Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,
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> Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or
>
> Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

Exemption 8: information relating to the supervision of financial institutions; and

Exemption 9: geological information on wells.

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 17, 2018 3:47 PM
To: Stacey Nathanson - NOAA Federal
Attachments: Answer to Amended Complaint v.2.pdf; 03 civil case general order.pdf; Pacer Court Filings.pdf

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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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY, Plaintiff, v. U.S. DEPARTMENT OF THE INTERIOR, *et al.*, Defendant.	No. 17-cv-0974 (KBJ)

GENERAL ORDER AND GUIDELINES FOR CIVIL CASES BEFORE JUDGE KETANJI BROWN JACKSON

This General Order applies to all cases assigned to the Civil Calendar of Judge Ketanji Brown Jackson. In order to administer this civil action fairly and in a manner that is consistent with the litigants' general interest in completing this litigation efficiently, it is hereby

ORDERED that all counsel and *pro se* litigants (referred to herein as "counsel") must familiarize themselves with both the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the District of Columbia.[1] It is

FURTHER ORDERED that all counsel must comply with this General Order, including the attached Appendix that contains specific directives regarding Communications with the Court, Hearings, Filing, Discovery, Motions and Stipulations, Alternative Dispute Resolution, and Settlement. The Court will hold the parties and counsel responsible for following these directives; failure to conform to this Order **may, when appropriate, result in the imposition of sanctions.**

DATE: May 23, 2017

Ketanji Brown Jackson
KETANJI BROWN JACKSON
United States District Judge

[1] The Local Civil Rules, including recent amendments and supplements, are available at http://www.dcd.uscourts.gov/court-info/local-rules-and-orders/local-rules.

APPENDIX TO GENERAL ORDER AND GUIDELINES FOR CIVIL CASES BEFORE JUDGE KETANJI BROWN JACKSON

1. COMMUNICATIONS WITH THE COURT RELATING TO SCHEDULING OR OTHERWISE

(a) Form of Communications. Communications with the Court should be in writing and only by written motion, opposition, and reply, not by letter. *Ex parte* communication with Judge Jackson (either directly or through her law clerks) is inappropriate and will not be tolerated.

(b) Status or Scheduling Inquiries. Oral inquiries concerning the status or scheduling of any pending matter are disfavored. If counsel nevertheless needs to make such an oral inquiry, it shall be made to the Courtroom Deputy Clerk, Mrs. Gwen Franklin (202-354-3145) rather than to Chambers. If Ms. Franklin is unavailable, the inquiry shall be made to her designated substitute in the Clerk's Office. Counsel shall follow the instructions that Ms. Franklin (or her substitute) provides. In an **actual emergency**, Chambers can be reached at 202-354-3350.

(c) Assistance with CM/ECF. Chambers cannot assist with questions regarding CM/ECF; any such inquiries should be made to the CM/ECF Help Line (202-354-3190).

2. HEARINGS

(a) Appearances at Hearings and Conferences. **All courtroom proceedings, unless otherwise indicated, will be conducted in Courtroom 17 of the E. Barrett Prettyman United States Courthouse, 333 Constitution Ave., NW, Washington, DC 20001.** The Court expects that principal trial counsel will appear at all hearings and conferences. In addition, counsel must have all necessary calendars, including calendars of co-counsel, available with them for possible scheduling of future events related to the case. Counsel with settlement authority must appear at the initial scheduling conference and at the final pretrial conference.

(b) Rescheduling Hearings.

i) Requests to reschedule hearings are strongly discouraged. Counsel who seek to change a previously scheduled hearing date shall confer with opposing counsel and shall file a written motion **at least four (4) business days prior to the scheduled hearing date** that shows good cause and proposes three alternative dates and times that would be convenient for all parties in the case. If counsel's suggested dates and/or times are not available on the

Court's calendar, the Court may reset the hearing for an alternative date and time of its choosing. The Court may, in its discretion, later decide that a previously scheduled hearing is not necessary and thereby take the hearing off the calendar and decide the given matter on the papers.

ii) If the Court is closed or the opening time for the start of the Court's day is delayed because of inclement weather or an unforeseen emergency, the Courtroom Deputy Clerk will reschedule the cases that were scheduled to be heard during the times when the Court was closed.

3. **FILING GUIDELINES**

(a) Service of the Complaint. The Plaintiff(s) shall promptly serve the complaint in accordance with Rule 4 of the Federal Rules of Civil Procedure and **shall file the proof(s) of service with the Court**. If Plaintiff fails to serve properly a copy of the complaint in the time Rule 4 prescribes, the Court may dismiss the action.

(b) Amended Pleadings: Any amended pleadings shall be accompanied by a redline comparison of the original and amended pleading.

(c) Electronic Case Filing (ECF).

i) Except as otherwise provided in LCvR 5.4, all documents to be filed with the Court must be filed through the Court's CM/ECF system.

ii) Each attachment to a filing (*e.g.*, supporting memorandum, statement of material facts, each exhibit, each affidavit, and proposed order) **must be filed as a separate PDF and appropriately labeled in ECF**. Counsel should submit PDFs in the smallest file size possible.

iii) A *pro se* party may obtain a CM/ECF password from the Clerk with leave of Court. To obtain leave of Court, the *pro se* party must file a written motion entitled "Motion for CM/ECF User Name and Password," describing the party's access to the internet, confirming the capacity to file documents and receive the filings of other parties electronically on a regular basis, and certifying that he or she either has successfully completed the entire Clerk's Office on-line tutorial or has been permitted to file electronically in other federal courts.

iv) Instructions for filing sealed documents in non-sealed cases are available at http://dcd-dev.jdc.ao.dcn/sites/dcd/files/AttySealedCivilREVMay2014.pdf.

(d) Courtesy Copies. Counsel **shall provide Chambers, not the Clerk's Office**, with a printed courtesy copy, with ECF headers, of any electronic submission that, along with exhibits, **numbers one hundred (100) pages or more in total length**. Such courtesy copies shall be in binders, three-hole punched, with double-sided pages. Exhibits shall be tabbed for ease of reference. The Court otherwise does not accept courtesy copies; the Court will contact the filing party if a courtesy copy of any particular submission is required.

4. DISCOVERY

(a) Discovery Material. Discovery material shall not be filed with the Court unless so ordered. *See* LCvR 5.2(a).

(b) Discovery Disputes. Counsel are referred to LCvR 26.2 and are expected to comply fully with its directives. Moreover, counsel are required, under both Fed. R. Civ. P. 26(f) and LCvR 7(m), to confer in good faith in an effort to resolve any discovery dispute and are hereby ordered to attempt to resolve any discovery dispute before bringing it to the Court's attention. If counsel are not able to resolve a discovery dispute, counsel shall jointly call chambers (202-354-3350) to arrange for a telephone conference with the Court. **Counsel shall not file any discovery-related motion without a prior telephone conference with the Court and opposing counsel.** It is the practice of this Court to refer discovery-related motions to a Magistrate Judge for resolution.

(c) Depositions. Counsel must adhere to the following guidelines when taking a deposition:

i) All counsel are to conduct themselves in a civil, polite, and professional manner. The Court will not countenance incivility or other behavior during the deposition demonstrating that the examination is being conducted in bad faith or to simply annoy, embarrass, or oppress the deponent.

ii) Counsel for the deponent shall refrain from gratuitous comments and from directing the deponent as to times, dates, documents, testimony, and the like.

iii) Counsel shall refrain from objecting in any manner other than stating an objection for the record followed by a word or two describing the legal basis for the objection.

iv) Counsel shall refrain from directing the deponent not to answer any question except for reasons that conform to Fed. R. Civ. P. 30(c)(2).

v) Counsel shall refrain from engaging in dialogue on the record during the course of the deposition.

vi) Counsel for any party or person given notice of the deposition may call for suspension of the deposition on the grounds that these conditions are not being adhered to and may immediately apply to the Court for a ruling and remedy. When appropriate, the Court will impose sanctions.

vii) In accordance with Fed. R. Civ. P. 30(d)(1), no deposition may last more than seven hours (exclusive of breaks), except by leave of the Court or stipulation of the parties.

5. MOTIONS AND STIPULATIONS

(a) Motions Generally. Counsel must comply with the following instructions when briefing any motion; failure to follow these instructions may result in *sua sponte* denial of the motion:

i) **Every memorandum of points and authorities that is ten pages or more in length must contain a Table of Contents and Table of Authorities, regardless of whether it is filed in support of or in opposition to a motion.** Any non-conforming submissions will not be accepted.

ii) **Each submission that attaches more than one exhibit shall contain an index of exhibits.** Exhibits shall be edited properly to exclude irrelevant material and to direct the Court's attention to the pertinent portions thereof. Any non-conforming submissions will not be accepted.

iii) Memoranda of points and authorities filed in support of or in opposition to any motion may not exceed forty-five (45) pages without leave of Court, and without such leave, reply memoranda may not exceed twenty-five (25) pages. The margins for such memoranda shall be set at one inch and all text in the main body must be double-spaced and in twelve-point Times New Roman font, while all footnotes must be single-spaced and in ten-point Times New Roman font. Counsel are cautioned not to attempt to circumvent these page limitations through extensive use of lengthy footnotes. The caption, signature blocks, and any required tables shall not count toward these limits.

iv) The Court may reject any filing that, without leave, is filed out of time or exceeds the page limitations established in the Local Rules or in an Order of this Court.

v) Counsel may not file a sur-reply without first requesting leave of the Court.

vi) If counsel fails to file a memorandum of points and authorities in opposition to a given motion, the Court may treat the motion as conceded. LCvR 7(b). Similarly, if counsel fails to respond to arguments in opposition papers, the Court may treat those specific arguments as conceded. *See Phrasavang v. Deutsche Bank*, 656 F. Supp. 2d 196, 201 (D.D.C. 2009) (citations omitted).

vii) Every pleading or paper, regardless of whether it is signed by an attorney or a pro se party, shall contain the name, address, telephone number, and, for an attorney, bar identification number of its signatory. LCvR 5.1(e).

viii) The Court will summarily deny motions that are subject to LCvR 7(m) but do not contain the requisite statement.

(b) Motions for Extensions of Time. Motions for extension of time are discouraged, and counsel should not expect the Court to grant extensions. **The Court will not entertain or honor stipulations for extensions of time.** Instead, counsel seeking an extension of a deadline shall file a written motion **at least two (2) business days prior to expiration of the deadline** that includes the following information:

i) The current deadline for which counsel seeks an extension;

ii) The specific grounds for the extension, including a statement of good cause or excusable neglect, as applicable;

iii) The number of previous extensions, if any, granted to each party;

iv) A statement of the impact that the requested extension would have on all other previously established deadlines;

v) A proposed schedule for any other affected deadlines, to be proposed only after consulting with opposing counsel; and

vi) A statement of opposing counsel's position vis-à-vis the motion in accordance with LCvR 7(m).

The Court may summarily deny any motion that does not comply with these requirements.

(c) Motions Seeking Leave to File Out of Time or To Exceed the Page Limitations.

i) Motions for leave to file out of time should demonstrate excusable neglect for the delay, and should state that the filing is ready to be submitted if the Court grants leave. **Counsel should not include (or lodge) the document to be filed.** If the Court grants leave, it will authorize counsel to file the document or motion subsequent to its ruling on the motion.

ii) Motions for leave to exceed the page limitations stated above in Part 5(a)(ii) and below in Part 5(e) are accepted but discouraged. Counsel who wish to seek leave to exceed page limitations shall file a written motion demonstrating good cause for the request.

(d) Motions for Summary Judgment. Counsel must comply with the following instructions when briefing motions for summary judgment, including cross-motions for summary judgment, and the Court may strike papers not in conformity herewith:

i) Every motion for summary judgment and opposition to such motion must comply with LCvR 7(h), which requires that each party submitting a motion for summary judgment **attach a statement of material facts for which that party contends there is no genuine dispute**, with specific citations to those portions of the record upon which the party relies in fashioning the statement. The party opposing the motion must, in turn, **submit a statement enumerating all material facts that the party contends are genuinely disputed** and thus require trial. LCvR 7(h)(1). The parties are strongly encouraged to review *Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner*, 101 F.3d 145 (D.C. Cir. 1996), on the subject of LCvR 7(h).

ii) The moving party's statement of material facts shall be a short and concise statement, **in numbered paragraphs**, of all material facts as to which the moving party claims there is no genuine dispute. The statement must contain **only one factual assertion in each numbered paragraph**.

iii) The party responding to a statement of material facts must (1) restate the movant's statement of undisputed material fact in numbered paragraphs, and (2) immediately following each

numbered paragraph state the opponent's response to the stated fact.

iv) If the responding party has additional facts that are not directly relevant to its response to any specific paragraph, it must identify such facts in consecutively numbered paragraphs **at the end** of its responsive statement of facts. **If such additional factual allegations are made, the movant must file a responsive statement of its own with its reply brief.**

v) If an opposition fails to include a separate concise statement of genuine disputed issues, or a response to the movant's statement of facts, or specific references to the parts of the record relied upon to support the statement or response, the Court may treat as conceded any facts asserted in the movant's statement of facts.

vi) The parties must furnish **precise citations** to the portions of the record on which they rely; the Court need not consider materials not specifically identified. Fed. R. Civ. P. 56(c)(1)(A), (c)(3).

(e) Motions for Reconsideration. Motions for reconsideration of prior rulings are strongly discouraged. Such motions shall be filed only when the requirements of Fed. R. Civ. P. 54(b), 59(e), and/or 60(b) are met. Any such motion **shall not exceed ten (10) pages in length**. Moreover, the Court will not entertain (a) motions that simply reassert arguments the party previously raised and the Court rejected, or (b) arguments that a party could have raised previously but now raises for the first time.

(f) Stipulations and Joint Motions for Protective Orders.

i) The parties may elect to file a stipulation that will become a part of the record of the case. The parties may not stipulate to extended deadlines, stays, or other matters altering the timing of the litigation or any other order of the Court. Moreover, no such stipulation shall be considered an enforceable Court order unless and until the Court signs the agreement.

ii) If the parties desire for this Court to sign any such stipulation or enter an order approving it, they must file a motion making that request. The motion must explain why cause exists for the Court to approve the stipulation, and the parties must submit the text of the proposed stipulation as an attachment to the motion.

iii) Joint motions to approve stipulated protective orders must contain a statement of good cause. *See* Fed. R. Civ. P. 26(c); *Klayman v. Judicial Watch, Inc.*, 247 F.R.D. 19, 23 (D.D.C. 2007).

6. ALTERNATIVE DISPUTE RESOLUTION

(a) The parties must thoroughly evaluate their settlement positions prior to the Rule 16 conference **and each party must be prepared to represent to the Court what particular facts, if any, need to be discovered, as well as what particular legal issues need to be addressed, as a prerequisite to engaging in meaningful settlement negotiations.**

(b) Submission to alternative dispute resolution, *e.g.*, mediation or neutral evaluation, is encouraged and available upon request to the Court at any time, as is a settlement conference before a Magistrate Judge.

7. SETTLEMENT

(a) Notification of Settlement. If the case settles in whole or in part, Plaintiff shall promptly notify the Court of the settlement.

(b) Provisional Dismissal. Upon receipt of a notice of settlement, it is the practice of this Court to issue a provisional order of dismissal that allows the parties to reopen the case within 45 days if they are unable to consummate the settlement.

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:17-cv-0974 (TJK)
	)	
UNITED STATES DEPARTMENT OF THE INTERIOR, *et al*.	)	
	)	
	)	
Defendants.	)	
	)	

ANSWER TO FIRST AMENDED COMPLAINT

Defendants United States Department of the Interior, United States Environmental Protection Agency ("EPA"), United States Department of Energy ("DOE"), United States Department of State ("State"), United States Department of Commerce ("DOC"), and United States National Oceanic and Atmospheric Administration ("NOAA"), by and through undersigned counsel, hereby answer the First Amended Complaint of Plaintiff Center for Biological Diversity as follows:

1. This paragraph contains Plaintiff's characterization of its action, to which no response is required.

2. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

3. Defendants admit that Plaintiff submitted Freedom of Information Act requests to each of the Defendants. Defendants respectfully refer the court to the requests as the best evidence of their contents.

4. Admit.

5. This paragraph contains conclusions of law to which no response is required. To the extent that a response is deemed required, Defendants deny the allegations.

6. This paragraph contains a characterization of the relief sought in this action, to which no response is required. To the extent that a response is deemed required, Defendants deny that Plaintiff is entitled to the relief sought, or to any other relief, in this case.

JURISDICTION AND VENUE

7. This paragraph contains Plaintiff's legal conclusions regarding jurisdiction, to which no response is required. To the extent that a response is deemed required, Defendants admit that this Court has jurisdiction.

8. This paragraph contains Plaintiff's legal conclusions regarding venue, to which no response is required. To the extent that a response is deemed required, Defendants admit that venue may be found in this District.

9. This paragraph contains Plaintiff's legal conclusions concerning this Court's authority to grant declaratory relief, to which no response is required. To the extent that a response is deemed required, deny.

10. This paragraph contains Plaintiff's legal conclusions concerning this Court's authority to grant injunctive relief, to which no response is required. To the extent that a response is deemed required, deny.

PARTIES

11. Admit the first sentence. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the claims.

12. Admit that Interior Department is a federal agency within the U.S. Government and is subject to 5 U.S.C. § 552(f). Interior Department lacks knowledge or information sufficient to admit or deny the allegations in the second sentence.

13. Admit that EPA is a federal agency within the U.S. Government and is subject to 5 U.S.C. § 552(f). EPA lacks knowledge or information sufficient to admit or deny the allegations in the second sentence.

14. Admit that DOE is a federal agency within the U.S. Government and is subject to 5 U.S.C. § 552(f). DOE lacks knowledge or information sufficient to admit or deny the allegations in the second sentence.

15. Admit that State is a federal agency within the U.S. Government and is subject to 5 U.S.C. § 552(f). State lacks knowledge or information sufficient to admit or deny the allegations in the second sentence.

16. Admit that DOC is a federal agency within the U.S. Government and is subject to 5 U.S.C. § 552(f). DOC lacks knowledge or information sufficient to admit or deny the allegations in the second sentence.

17. Admit that NOAA is a federal agency within the U.S. Government. NOAA lacks knowledge or information sufficient to admit or deny the allegations in the second sentence

STATUTORY BACKGROUND

18. This paragraph characterizes the purpose of the Freedom of Information Act ("FOIA") and makes legal conclusions concerning the availability of government records under the FOIA, to which no response is required.

19. This paragraph contains Plaintiff's characterization of the requirements of FOIA, to which no response is required.

20. This paragraph contains Plaintiff's characterization of the requirements of FOIA, to which no response is required.

21. This paragraph contains Plaintiff's characterization of the requirements of FOIA, to which no response is required.

22. This paragraph contains Plaintiff's characterization of the requirements of FOIA, to which no response is required.

23. This paragraph contains Plaintiff's characterization of the requirements of FOIA, to which no response is required.

24. This paragraph contains Plaintiff's characterization of the requirements of FOIA, to which no response is required.

25. This paragraph contains Plaintiff's characterization of the requirements of FOIA, to which no response is required.

26. This paragraph contains Plaintiff's characterization of the requirements of FOIA, to which no response is required.

27. This paragraph contains Plaintiff's legal conclusions concerning this Court's authority to grant injunctive relief, to which no response is required.

28. This paragraph contains conclusions of law, to which no response is required.

FACTUAL BACKGROUND

Interior Department FOIA Request (OS-2017-00384)

29. Admit that the quoted text is contained in Plaintiff's FOIA request and admit that it received the request on March 30, 2017.

30. Admit.

31. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, Defendant Interior Department denies that a determination was due on April 27, 2017, avers that it took a 10-day working extension, and further avers that Plaintiff was notified of the 10-day extension in the acknowledgement letter referenced in Paragraph 28.

32. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed necessary, Defendant Interior Department denies that it has not requested additional time to respond but otherwise admits the allegations in this paragraph.

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

33. Admit that Plaintiff's FOIA request was submitted on March 30, 2017, and that it contains the text quoted in the complaint.

34. Admit the first sentence. Admit EPA granted Plaintiff's fee waiver request, but the date of the action was April 12, 2017.

35. This paragraph contains conclusions of law, to which no response is required.

36. Admit that Plaintiff sent a letter to EPA on May 8, 2017. Defendants respectfully direct the Court to the letter for a full and accurate assessment of its contents.

37. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed necessary, Defendant EPA admits that it has not responded to the May 8, 2017 letter.

Energy Department FOIA Request (HQ-2017-00806)

38. Defendant DOE admits that it received a FOIA request from Plaintiff on March 30, 2017, and that it contains the text quoted in the complaint.

39. Admit, with the clarification that the controlled number for the request is HQ-2017-008060F.

40. Admit.

41. Admit.

42. Admit.

43. Admit.

44. Defendants admit only that DOE sent an interim response to Plaintiff on April 26, 2017, and respectfully refers the Court to that document as the best evidence of its contents.

45. This paragraph contains conclusions of law, to which no response is required.

46. Defendants admit only that DOE provided a determination in response to Plaintiff's request by letter dated August 11, 2017.

47. Defendants admit that DOE's search did not locate any responsive documents.

48. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

49. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed necessary, deny.

State Department FOIA Request

50. Admit that State received a FOIA request on April 4, 2017, and that it contains the text quoted in the complaint.

51. Deny that State "acknowledged" the request and assigned it a tracking number on April 4, 2017, but admit that an automatic confirmation of the submission of Plaintiff's FOIA request was generated on that date. Admit that State later assigned the tracking number F-2017-08517 to Plaintiff's request.

52. Admit that State acknowledged the FOIA request and granted a fee waiver by letter on April 10, 2017.

53. Admit that State received a letter on May 31, 2017, requesting a determination on the FOIA request and an estimated date for completion.

54. Admit that State confirmed receipt of the May 31, 2017, letter by email on June 1, 2017, but deny that the email confirmation contained the quoted text.

55. This paragraph contains conclusions of law, to which no response is required.

56. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed necessary, Defendant State admits that it has not responded to the request.

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

57. Admit that Plaintiff's FOIA request directed to DOC was received on April 3, 2017, and that it contains the text quoted in the complaint. Defendants respectfully direct the Court to the request for a full and accurate assessment of its contents.

58. Admit that on April 3, 2017, Plaintiff's FOIA request directed to DOC was assigned tracking number DOC-OS-2017-000939 and an acknowledgment of receipt of the request was sent by FOIAOnline. Admit the second sentence.

59. Admit that DOC sent a letter to the Plaintiff on April 13, 2017. Defendants respectfully direct the Court to the letter for a full and accurate assessment of its contents.

60. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations. Deny that DOC has any record of receiving an email from Plaintiff on April 17, 2017.

61. Admit the first three sentences, and admit that on May 23, 2017, DOC received an email from Plaintiff. Defendants respectfully direct the Court to the email for a full and accurate assessment of its contents.

62. This paragraph contains conclusions of law, to which no response is required.

63. This paragraph contains conclusions of law, to which no response is required.

64. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed necessary, DOC admits that as of the date of filing of the First Amended Complaint it had not made a final determination on FOIA request DOC-OS-2017-000939.

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

65. Admit that Plaintiff's FOIA request directed to NOAA was received on April 10, 2017, perfected on April 19, 2017, and that it contains the text quoted in the complaint. Defendants respectfully direct the Court to the request for a full and accurate assessment of its contents.

66. Admit that on April 21, 2017, the request was assigned tracking number DOC-NOAA-2017-001066 and an acknowledgment of receipt of the request was sent by FOIAOnline. Admit that NOAA sent a letter to Plaintiff regarding the request on April 24, 2017. Defendants respectfully direct the Court to the letter for a full and accurate assessment of its contents.

67. Admit that NOAA sent Plaintiff an email via FOIAOnline on May 3, 2017, and that it contains the text quoted in the complaint. Defendants respectfully direct the Court to the email for a full and accurate assessment of its contents.

68. Admit that NOAA sent Plaintiff a determination letter regarding the NOAA FOIA Request via FOIAOnline on May 10, 2017, that the cover email enclosing the determination letter contains the text quoted in the complaint and that the determination letter included notification to Plaintiff of its appeal rights. Defendants respectfully direct the Court to the email and determination letter for a full and accurate assessment of its contents.

69. Deny that NOAA received an appeal regarding the NOAA FOIA Request, but admit (i) that DOC received an appeal regarding the NOAA FOIA Request on June 30, 2017, (ii) that on the same day the appeal was assigned tracking number DOC-OS-2017-001456, and (iii) that an acknowledgment of receipt of the appeal was sent via FOIAOnline.

70. Deny that NOAA responded to the NOAA FOIA Appeal[1] and deny that prior to July 3, 2017, any determination on the NOAA FOIA Appeal existed to affirm. Admit that on July 3, 2017, in response to the NOAA FOIA Appeal, DOC affirmed NOAA's final determination on the NOAA FOIA Request and DOC's response letter contains the text quoted in the complaint. Defendants respectfully direct the Court to the appeal response issued by DOC for a full and accurate assessment of its contents.

71. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

72. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed necessary, deny.

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[1] Although Defendants accept Plaintiff's definition and use of the term "NOAA FOIA Appeal", Defendants note that Plaintiff's terminology may be confusing as appeals regarding determinations of FOIA requests made by NOAA should be submitted to DOC. Defendants further note that Plaintiff correctly submitted the NOAA FOIA Appeal to DOC.

All Requests

73. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed required, deny.

74. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

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. Defendants incorporate herein their prior answers to the preceding paragraphs.

76. This paragraph contains conclusions of law, to which no response is required.

77. This paragraph contains conclusions of law, to which no response is required.

78. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

79. Deny.

80. Deny.

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

81. Defendants incorporate herein their answers to the preceding paragraphs.

82. This paragraph contains conclusions of law, to which no response is required.

83. This paragraph contains conclusions of law, to which no response is required.

84. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

85. Deny.

COUNT THREE: The Energy Department Missed FOIA's Mandatory Determination Deadline for the Center's Energy Department FOIA Request Number HQ-2017-00806

86. Defendants incorporate herein their answers to the preceding paragraphs.

87. This paragraph contains conclusions of law, to which no response is required.

88. This paragraph contains conclusions of law, to which no response is required.

89. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

90. Deny.

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

91. Defendants incorporate herein their answers to the preceding paragraphs.

92. This paragraph contains conclusions of law, to which no response is required.

93. This paragraph contains conclusions of law, to which no response is required.

94. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

95. Deny.

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. Defendants incorporate herein their answers to the preceding paragraphs.

97. This paragraph contains conclusions of law, to which no response is required.

98. This paragraph contains conclusions of law, to which no response is required.

99. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

100. Deny.

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 Record Responsive to Interior Department FOIA Request Number OS-2017-00384

101. Defendants incorporate herein their answers to the preceding paragraphs.

102. This paragraph contains conclusions of law, to which no response is required.

103. This paragraph contains conclusions of law, to which no response is required.

104. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

105. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

106. Deny.

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

107. Defendants incorporate herein their answers to the preceding paragraphs.

108. This paragraph contains conclusions of law, to which no response is required.

109. This paragraph contains conclusions of law, to which no response is required.

110. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

111. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

112. Deny.

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

113. Defendants incorporate herein their answers to the preceding paragraphs.

114. This paragraph contains conclusions of law, to which no response is required.

115. This paragraph contains conclusions of law, to which no response is required.

116. Defendants lack knowledge or information sufficient to admit or deny the truth of the allegations in the paragraph and therefore deny the allegations.

117. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

118. Deny.

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

119. Defendants incorporate herein their answers to the preceding paragraphs.

120. This paragraph contains conclusions of law, to which no response is required.

121. This paragraph contains conclusions of law, to which no response is required.

122. Defendants lack knowledge or information sufficient to admit or deny the truth of the allegations in the paragraph and therefore deny the allegations.

123. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

124. Deny.

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

125. Defendants incorporate herein their answers to the preceding paragraphs.

126. This paragraph contains conclusions of law, to which no response is required.

127. This paragraph contains conclusions of law, to which no response is required.

128. Defendants lack knowledge or information sufficient to admit or deny the truth of the allegations in the paragraph and therefore deny the allegations.

129. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

130. Deny.

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. Defendants incorporate herein their answers to the preceding paragraphs.

132. This paragraph contains conclusions of law, to which no response is required.

133. This paragraph contains conclusions of law, to which no response is required.

134. Defendants lack knowledge or information sufficient to admit or deny the truth of the allegations in the paragraph and therefore deny the allegations.

135. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

136. Deny.

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. Defendants incorporate herein their answers to the preceding paragraphs

138. This paragraph contains conclusions of law, to which no response is required.

139. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

140. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

141. Deny.

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

142. Defendants incorporate herein their answers to the preceding paragraphs.

143. This paragraph contains conclusions of law, to which no response is required.

144. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

145. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

146. Deny.

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

147. Defendants incorporate herein their answers to the preceding paragraphs.

148. This paragraph contains conclusions of law, to which no response is required.

149. Defendants lack knowledge or information sufficient to admit or deny the truth of the allegations in the paragraph and therefore deny the allegations.

150. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

151. Deny.

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. Defendants incorporate herein their answers to the preceding paragraphs.

153. This paragraph contains conclusions of law, to which no response is required.

154. Defendants lack knowledge or information sufficient to admit or deny the truth of the allegations in the paragraph and therefore deny the allegations.

155. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

156. Deny.

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. Defendants incorporate herein their answers to the preceding paragraphs.

158. This paragraph contains conclusions of law, to which no response is required.

159. Defendants lack knowledge or information sufficient to admit or deny the truth of the allegations in the paragraph and therefore deny the allegations.

160. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

161. Deny.

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. Defendants incorporate herein their answers to the preceding paragraphs.

163. This paragraph contains conclusions of law, to which no response is required.

164. Defendants lack knowledge or information sufficient to admit or deny the truth of the allegations in the paragraph and therefore deny the allegations.

165. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

166. Deny.

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 Reasonably Segregable Portions of Any Lawfully Exempt Records

167. Defendants incorporate herein their answers to the preceding paragraphs.

168. This paragraph contains conclusions of law, to which no response is required.

169. This paragraph contains conclusions of law, to which no response is required.

170. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

171. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

172. Deny.

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

173. Defendants incorporate herein their answers to the preceding paragraphs.

174. This paragraph contains conclusions of law, to which no response is required.

175. This paragraph contains conclusions of law, to which no response is required.

176. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

177. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the claims.

178. Deny.

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

179. Defendants incorporate herein their answers to the preceding paragraphs.

180. This paragraph contains conclusions of law, to which no response is required.

181. This paragraph contains conclusions of law, to which no response is required.

182. Defendants lack knowledge or information sufficient to admit or deny the truth of the allegations in the paragraph and therefore deny the allegations.

183. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

184. Deny.

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

185. Defendants incorporate herein their answers to the preceding paragraphs.

186. This paragraph contains conclusions of law, to which no response is required.

187. This paragraph contains conclusions of law, to which no response is required.

188. Defendants lack knowledge or information sufficient to admit or deny the truth of the allegations in the paragraph and therefore deny the allegations.

189. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

190. Deny.

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

191. Defendants incorporate herein their answers to the preceding paragraphs.

192. This paragraph contains conclusions of law, to which no response is required.

193. This paragraph contains conclusions of law, to which no response is required.

194. Defendants lack knowledge or information sufficient to admit or deny the truth of the allegations in the paragraph and therefore deny the allegations.

195. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

196. Deny.

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

197. Defendants incorporate herein their answers to the preceding paragraphs.

198. This paragraph contains conclusions of law, to which no response is required.

199. This paragraph contains conclusions of law, to which no response is required.

200. Defendants lack knowledge or information sufficient to admit or deny the truth of the allegations in the paragraph and therefore deny the allegations.

201. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and therefore deny the allegations.

202. Deny.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
(In the Alternative to the First and 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. Defendants incorporate herein their answers to the preceding paragraphs.

204. This paragraph contains conclusions of law, to which no response is required.

205. This paragraph contains conclusions of law, to which no response is required.

206. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

207. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

208. This paragraph contains conclusions of law, to which no response is required.

209. Deny.

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

210. Defendants incorporate herein their answers to the preceding paragraphs.

211. This paragraph contains conclusions of law, to which no response is required.

212. This paragraph contains conclusions of law, to which no response is required.

213. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

214. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

215. This paragraph contains conclusions of law, to which no response is required.

216. Deny.

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

217. Defendants incorporate herein their answers to the preceding paragraphs.

218. This paragraph contains conclusions of law, to which no response is required.

219. This paragraph contains conclusions of law, to which no response is required.

220. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

221. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations

222. This paragraph contains conclusions of law, to which no response is required.

223. Deny.

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

224. Defendants incorporate herein their answers to the preceding paragraphs.

225. This paragraph contains conclusions of law, to which no response is required.

226. This paragraph contains conclusions of law, to which no response is required.

227. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

228. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

229. This paragraph contains conclusions of law, to which no response is required.

230. Deny.

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

231. Defendants incorporate herein their answers to the preceding paragraphs.

232. This paragraph contains conclusions of law, to which no response is required.

233. This paragraph contains conclusions of law, to which no response is required.

234. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

235. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

236. This paragraph contains conclusions of law, to which no response is required.

237. Deny.

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

238. Defendants incorporate herein their answers to the preceding paragraphs.

239. This paragraph contains conclusions of law, to which no response is required.

240. This paragraph contains conclusions of law, to which no response is required.

241. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

242. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

243. This paragraph contains conclusions of law, to which no response is required.

244. Deny.

SIXTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION 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. Defendants incorporate herein their answers to the preceding paragraphs.

246. This paragraph contains conclusions of law, to which no response is required.

247. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

248. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations

249. This paragraph contains conclusions of law, to which no response is required.

250. Deny.

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

251. Defendants incorporate herein their answers to the preceding paragraphs.

252. This paragraph contains conclusions of law, to which no response is required.

253. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

254. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the claims.

255. This paragraph contains conclusions of law, to which no response is required.

256. Deny.

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

257. Defendants incorporate herein their answers to the preceding paragraphs.

258. This paragraph contains conclusions of law, to which no response is required.

259. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

260. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

261. This paragraph contains conclusions of law, to which no response is required.

262. Deny.

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

263. Defendants incorporate herein their answers to the preceding paragraphs.

264. This paragraph contains conclusions of law, to which no response is required.

265. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

266. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

267. This paragraph contains conclusions of law, to which no response is required.

268. Deny.

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

269. Defendants incorporate herein their answers to the preceding paragraphs.

270. This paragraph contains conclusions of law, to which no response is required.

271. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

272. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

273. This paragraph contains conclusions of law, to which no response is required.

274. Deny.

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

275. Defendants incorporate herein their answers to the preceding paragraphs.

276. This paragraph contains conclusions of law, to which no response is required.

277. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

278. This paragraph contains conclusions of law, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the remainder of the paragraph and therefore deny the allegations.

279. This paragraph contains conclusions of law, to which no response is required.

280. Deny.

PRAYER FOR RELIEF

The remaining paragraphs contain Plaintiff's requests for relief, not allegations of fact, and therefore no response is required. To the extent a response may be deemed necessary, Defendant denies the allegations contained in these paragraphs, and further aver that Plaintiff is not entitled to the requested relief or to any other relief from Defendant.

Defendant denies any and all allegations in the Amended Complaint not expressly admitted herein.

FIRST AFFIRMATIVE DEFENSE

As to some or all of the claims asserted in this action, Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The information sought by Plaintiff is exempt from release in full under one or more FOIA exemptions.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's FOIA requests are overbroad and do not reasonably describe the records sought.

FOURTH AFFIRMATIVE DEFENSE

The Amended Complaint should be dismissed in whole or in part to the extent Plaintiff failed to exhaust administrative remedies with respect to some or all of the FOIA requests at issue.

Respectfully submitted,

JESSIE K. LIU, D.C. BAR # 472845
United States Attorney

DANIEL F. VAN HORN, D.C. BAR #924092
Chief, Civil Division

/s/
JOSHUA KOLSKY, D.C. BAR # 993430
Assistant United States Attorney
District of Columbia
555 Fourth St., N.W.
Washington, D.C. 20530
Phone: (202) 252-2541
Fax: (202) 252-2599
joshua.kolsky@usdoj.gov

Counsel for Defendants

TYPE I-FOIA

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:17-cv-00974-KBJ

CENTER FOR BIOLOGICAL DIVERSITY v. U.S. DEPARTMENT OF THE INTERIOR et al
Assigned to: Judge Ketanji Brown Jackson
Cause: 05:552 Freedom of Information Act

Date Filed: 05/23/2017
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

CENTER FOR BIOLOGICAL DIVERSITY represented by

Margaret E. Townsend
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211
(971) 717-6409
Fax: (503) 283-5528
Email: mtownsend@biologicaldiversity.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amy R. Atwood
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211
(971) 717-6401
Fax: (503) 283-5528
Email: atwood@biologicaldiversity.org
ATTORNEY TO BE NOTICED

V.

Defendant

U.S. DEPARTMENT OF THE INTERIOR represented by

Joshua M. Kolsky
U.S. ATTORNEY'S OFFICE FOR THE DISTRICT OF COLUMBIA
555 Fourth Street, NW
Washington, DC 20530
(202) 252-2541
Fax: (202) 252-2599
Email: joshua.kolsky@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

U.S. ENVIRONMENTAL PROTECTION AGENCY represented by

Joshua M. Kolsky
(See above for address)

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

U.S. DEPARTMENT OF ENERGY represented by **Joshua M. Kolsky**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

U.S. DEPARTMENT OF STATE represented by **Joshua M. Kolsky**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

U.S. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Defendant

U.S. DEPARTMENT OF COMMERCE

Date Filed	#	Docket Text
05/23/2017	1	COMPLAINT against U.S. DEPARTMENT OF ENERGY, U.S. DEPARTMENT OF STATE, U.S. DEPARTMENT OF THE INTERIOR, U.S. ENVIRONMENTAL PROTECTION AGENCY (Filing fee $ 400 receipt number 0090-4961916) filed by CENTER FOR BIOLOGICAL DIVERSITY. (Attachments: # 1 Civil Cover Sheet, # 2 Summons, # 3 Summons, # 4 Summons, # 5 Summons, # 6 Summons, # 7 Summons) (Atwood, Amy) (Entered: 05/23/2017)
05/23/2017	2	Corporate Disclosure Statement by CENTER FOR BIOLOGICAL DIVERSITY. (Atwood, Amy) (Entered: 05/23/2017)
05/23/2017		Case Assigned to Judge Ketanji Brown Jackson. (jd) (Entered: 05/23/2017)
05/23/2017	3	SUMMONS (6) Issued Electronically as to U.S. DEPARTMENT OF ENERGY, U.S. DEPARTMENT OF STATE, U.S. DEPARTMENT OF THE INTERIOR, U.S. ENVIRONMENTAL PROTECTION AGENCY, U.S. Attorney and U.S. Attorney General (Attachment: # 1 Consent Forms)(jd) (Entered: 05/23/2017)
05/23/2017	4	GENERAL ORDER AND GUIDELINES FOR CIVIL CASES BEFORE JUDGE KETANJI BROWN JACKSON. The Court will hold the parties and counsel responsible for following these directives, and parties and counsel should pay particular attention to the Courts instructions for briefing motions and filing exhibits. Failure to adhere to this Order may, when appropriate, result the imposition of sanctions and/or sua sponte denial of non-conforming motions. Signed by Judge Ketanji Brown Jackson on 5/23/2017. (lckbj1) (Entered: 05/23/2017)
06/29/2017	5	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 6/6/2017. Answer due for ALL FEDERAL DEFENDANTS by 7/6/2017. (Atwood, Amy) (Entered: 06/29/2017)
06/29/2017	6	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United

		States Attorney General. Date of Service Upon United States Attorney General 6/2/2017. (Atwood, Amy) (Entered: 06/29/2017)
06/29/2017	7	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. U.S. DEPARTMENT OF ENERGY served on 6/1/2017; U.S. DEPARTMENT OF STATE served on 6/19/2017; U.S. DEPARTMENT OF THE INTERIOR served on 6/2/2017; U.S. ENVIRONMENTAL PROTECTION AGENCY served on 6/1/2017 (Atwood, Amy) (Entered: 06/29/2017)
06/29/2017	8	NOTICE of Appearance by Joshua M. Kolsky on behalf of U.S. DEPARTMENT OF ENERGY, U.S. DEPARTMENT OF STATE, U.S. DEPARTMENT OF THE INTERIOR, U.S. ENVIRONMENTAL PROTECTION AGENCY (Kolsky, Joshua) (Entered: 06/29/2017)
06/29/2017	9	Unopposed MOTION for Extension of Time to File Answer re 1 Complaint, by U.S. DEPARTMENT OF ENERGY, U.S. DEPARTMENT OF STATE, U.S. DEPARTMENT OF THE INTERIOR, U.S. ENVIRONMENTAL PROTECTION AGENCY (Attachments: # 1 Text of Proposed Order)(Kolsky, Joshua) (Entered: 06/29/2017)
07/03/2017		MINUTE ORDER granting, for good cause shown, 9 Unopposed Motion for Extension of Time to Answer. Defendants shall answer or otherwise respond to the complaint on or before 7/27/2017. Signed by Judge Ketanji Brown Jackson on 07/03/2017. (lckbj1) (Entered: 07/03/2017)
07/27/2017	10	ANSWER to Complaint by U.S. DEPARTMENT OF ENERGY, U.S. DEPARTMENT OF STATE, U.S. DEPARTMENT OF THE INTERIOR, U.S. ENVIRONMENTAL PROTECTION AGENCY.(Kolsky, Joshua) (Entered: 07/27/2017)
07/28/2017		MINUTE ORDER. Before the Court in this FOIA case are a complaint and an answer. It is hereby ORDERED that the parties shall promptly confer and file a joint proposed schedule for briefing or disclosure, on or before 8/11/2017. Signed by Judge Ketanji Brown Jackson on 07/28/2017. (lckbj1) (Entered: 07/28/2017)
08/11/2017	11	Joint PROPOSED BRIEFING SCHEDULE *Joint Proposed Schedule* by CENTER FOR BIOLOGICAL DIVERSITY. (Atwood, Amy) Modified event title on 8/14/2017 (znmw). (Entered: 08/11/2017)
08/11/2017	12	NOTICE of Appearance by Margaret E. Townsend on behalf of CENTER FOR BIOLOGICAL DIVERSITY (Townsend, Margaret) (Entered: 08/11/2017)
08/14/2017		MINUTE ORDER. Based on the representations in the parties' 11 Joint Status Report, it is hereby ORDERED that Plaintiff shall file any amended complaint on or before 8/17/2017, and shall promptly serve any such amended complaint. Signed by Judge Ketanji Brown Jackson on 08/14/2017. (lckbj1) (Entered: 08/14/2017)
08/14/2017		Set/Reset Deadlines: Amended Complaint due by 8/17/2017. (hs) (Entered: 08/14/2017)
08/16/2017	13	AMENDED COMPLAINT *First Amended Complaint* against U.S. DEPARTMENT OF ENERGY, U.S. DEPARTMENT OF STATE, U.S. DEPARTMENT OF THE INTERIOR, U.S. ENVIRONMENTAL PROTECTION AGENCY, U.S. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION filed by CENTER FOR BIOLOGICAL DIVERSITY. (Attachments: # 1 Redline Comparison to Complaint)(Townsend, Margaret) Modified to add defendant on 8/17/2017 (znmw). (Entered: 08/16/2017)
08/17/2017	14	REQUEST FOR SUMMONS TO ISSUE *for the U.S. Department of Commerce, U.S. National Oceanic and Atmospheric Administration, U.S. Attorney, and U.S. Attorney General* re 13 Amended Complaint, filed by CENTER FOR BIOLOGICAL DIVERSITY. Related document: 13 Amended Complaint, filed by CENTER FOR BIOLOGICAL DIVERSITY.(Townsend, Margaret) (Entered: 08/17/2017)

08/18/2017	15	SUMMONS (4) Issued Electronically as to U.S. DEPARTMENT OF COMMERCE, U.S. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. Attorney and U.S. Attorney General (znmw) (Entered: 08/18/2017)
08/29/2017	16	Consent MOTION for Extension of Time to File Answer re 13 Amended Complaint, by U.S. DEPARTMENT OF ENERGY, U.S. DEPARTMENT OF STATE, U.S. DEPARTMENT OF THE INTERIOR, U.S. ENVIRONMENTAL PROTECTION AGENCY (Attachments: # 1 Text of Proposed Order)(Kolsky, Joshua) (Entered: 08/29/2017)

PACER Service Center			
Transaction Receipt			
08/30/2017 15:59:28			
PACER Login:	GCNRSWSS:2726730:0	**Client Code:**	FOIA
Description:	Docket Report	**Search Criteria:**	1:17-cv-00974-KBJ
Billable Pages:	3	**Cost:**	0.30

From: Karen Robin - NOAA Federal <karen.robin@noaa.gov>
Sent: Wednesday, January 17, 2018 4:15 PM
To: Mark Graff - NOAA Federal
Subject: FW: DOC-NOAA-2017-001760 (Final referral Ltrs review)
Attachments: 2017-001760 - Referral to NFC.docx; 2017-001760 - Ltr to requester (referring to OPM & NFC).docx; 2017-001760 - Referral to OPM.docx

Hi Mark,
(b)(5) [redacted]
[redacted]?)
Thanks,
Karen
—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD ● (301) 713-6361

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From: Karen Robin - NOAA Federal [mailto:karen.robin@noaa.gov]
Sent: Tuesday, January 16, 2018 6:22 PM
To: Mark Graff - NOAA Federal
Subject: DOC-NOAA-2017-001760 (Final referral Ltrs review)

Here are my final draft letter (b)(5) [redacted]

Thanks,
Karen

—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD ● (301) 713-6361

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or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Monday, September 18, 2017 10:42 AM
To: Karen Robin - NOAA Federal
Subject: Re: DOC-NOAA-2017-001760 (Taylor's files via atty)

(b)(5) [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, Sep 18, 2017 at 9:38 AM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Thanks for reviewing this plan.

After I collected the letter templates, I developed heartburn:

- (b)(5) [redacted]

- [redacted]*

[redacted]

[redacted]

[redacted]

[redacted]?

Thanks,

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: Monday, September 18, 2017 7:29 AM
To: Karen Robin - NOAA Federal
Subject: Re: DOC-NOAA-2017-001760 (Taylor's files via atty)

(b)(5) [redacted].

Otherwise--looks good.

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 Thu, Sep 14, 2017 at 3:40 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Mark,

Further on this request, please review/repair my plan, which is in this order:

(b)(5) [redacted]

(b)(5) [redacted]

[redacted]

[redacted]. My notes from our conversation last week are unclear on that point.

Thanks,
Karen

—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD ● (301) 713-6361

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(b)(5)

(b)(5)

(b)(5)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, January 18, 2018 1:15 PM
To: Lola Stith - NOAA Affiliate
Subject: Fwd: Fee Estimate Tasker: Kleinman_DOC-OS-2018-000264
Attachments: Kleinman_DOC-OS-2018_000264_Second Amended Fee Estimate Tasker.docx

(b)(5) [redacted] Am I mistaken on this one?

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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---------- Forwarded message ----------
From: **Khalid, Sulma (Contractor)** <SKhalid@doc.gov>
Date: Thu, Jan 18, 2018 at 10:44 AM
Subject: Fee Estimate Tasker: Kleinman_DOC-OS-2018-000264
To: "Parsons, Bobbie (Federal)" <bParsons@doc.gov>, "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>

Good Morning,

On 12/26/2017, your Bureau was tasked with providing OPOG with a fee estimate request for the request DOC-OS-2018-000264 by 12/29/2017. The requester has since narrowed her scope twice, which I communicated to you via e-mail. To date, your bureau has not provided me with a fee estimate for the subject case. Please review the attached search tasker and provide me with a fee estimate as soon as you can. Please make sure you are using the correct tasker, attached here, and labeled "Kleinman_DOC-OS-2018-000264_Second Amended Dee Estimate Tasker.docx" Please feel free to reach out to me if you have any questions.

Thanks!

Regards,

Sulma

Sulma Khalid

FOIA/PA Analyst (Contractor)

U.S. Department of Commerce

Office of Privacy and Open Government

Phone Number: (202) 482-7432

Email: skhalid@doc.gov

December 26, 2017

MEMORANDUM FOR: Catherine Fletcher, NIST
Mark Graff, NOAA
Jamie Boston, PTO
Bobbie Parsons, IOS

FROM: Michael Toland, Ph.D.
Deputy Chief FOIA Officer
Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Request
Kleinman- DOC-OS-2018-000264

The Department has received a Freedom of Information Act (FOIA) request. We have been corresponding with the requester to narrow the scope of her request. The first and second versions of her request resulted in exorbitant fee estimates. She therefore narrowed her request to seek the following:

1. All communications between Safra Catz or someone with @oracle.com domain name and Wilbur Ross and/or his staff; and
2. All communications with Safra Catz or someone with @oracle.com domain name related to May 11, 2017 Presidential Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure.

Please conduct a fee estimate for the above information. This is a Commercial requester.

- The chargeable services for "Commercial" are search, review and duplication.
- The chargeable services for "Media, Educational, and/or Non-commercial Scientific Institution" are duplication, excluding the first 100 pages.
- The chargeable services for "Other" are search and duplication, excluding the first two hours of search and the first 100 pages.

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

Please determine the fee estimate with respect to responsive documents located within your office. **DO NOT SEARCH YET**. Rather, we need an **ESTIMATE** from you as to how many hours/pages you may locate for this request. **This is only a good faith estimate, you should not search in order to come up with the estimate**. Also, a search need not actually find documents in order to be chargeable, so long as,

at the outset, there is a reasonable likelihood that there may be responsive documents, and the search is conducted with due diligence.

Please fill in the applicable information and return this sheet by C.O.B. December 29, 2017 to: Sulma Khalid, FOIA Analyst, Office of Privacy and Open Government, Room 52010FB, Washington, D.C. 20230, Telephone – 202-482-7432, e-mail – skhalid@doc.gov**.**

For documents responsive under the Freedom of Information Act:

Computer Search (Complete if necessary.)

Total estimated cost for duplication in electronic version (cost of disc or CD). _____

Total estimated hours of time for electronic search. _____

Total estimated dollar amount for electronic search. _____

Total estimated hours for review. _____

Total estimated dollar amount for review. _____

Manual Search (Complete if necessary.)

Total estimated number of pages of documents. _____

Total estimated dollar amount for duplication. _____

Total estimated hours for search. _____

Total estimated dollar amount for search. _____

Total estimated hours for review. _____

Total estimated dollar amount for review. _____

This information is needed to compute a total "OS" fee estimate for the requester.

No records. _____

_____ _____ _____

Signature (Senior Official) Bureau Date

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, January 18, 2018 2:56 PM
To: Susan Beresford - NOAA Federal
Cc: Jeff Dillen; Kristen Gustafson - NOAA Federal; John; Charles Green; Alexa; Williams, Edrie (USADC) [Contractor]; Haynes, Fred (USADC)
Subject: Re: Opening Case 18-0047
Attachments: 2018.01.08 AWI Complaint.pdf; AWI Original Request.pdf

Hello Susie,

I'm not sure why you were included on this one. (b)(5) [redacted].

I'm including a copy of the original FOIA request and complaint for your reference. Please let me know if you need anything on my end.

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 Thu, Jan 18, 2018 at 2:30 PM, Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov> wrote:

> All, including Mark Graff,
>
> For some reason, this e-mail was sent to me. (b)(5) [redacted]
>
> [redacted] Thank you for your attention to this matter.
>
> Susie.
>
> On Thu, Jan 18, 2018 at 1:45 PM, Williams, Edrie (USADC) [Contractor] <Edrie.Williams2@usdoj.gov> wrote:
>
> > Hello Ms. Beresford,

(b)(5) [redacted]

[redacted]

[redacted]

[redacted]

[redacted].

Thanks and have a good day.

Edrie Ruth Williams

Legal Assistant

U.S. Attorney's Office

555 4th Street, N.W.

Room 4807

Washington, D.C. 20530

Phone: (202) 252-2572

Fax: (202) 252-2599

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

--

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE 900 Pennsylvania Avenue, SE Washington, D.C. 20003, Plaintiff, v. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, 1401 Constitution Avenue, NW, Room 5128 Washington, D.C. 20230 and NATIONAL MARINE FISHERIES SERVICE, 1315 East-West Highway Silver Spring, MD 20910, Defendants.	)	Civ. No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Animal Welfare Institute brings this action against defendants National Oceanic and Atmospheric Administration and National Marine Fisheries Service for violations of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

PARTIES

2. Plaintiff Animal Welfare Institute ("AWI") is a 501(c)(3) non-profit organization that seeks to protect animals from human inflicted suffering. In particular, AWI has advocated for the protection of whales and other marine life from life from human activities such as harmful fishing practices, hunting, underwater noise production, and inhumane practices resulting from captive maintenance for purposes of public display and scientific research. AWI is the requester of the records at issue.

3. Defendant National Oceanic and Atmospheric Administration ("NOAA") is an agency of the federal government within the U.S. Department of Commerce that focuses on the conditions of the oceans and the atmosphere, including marine wildlife.

4. Defendant National Marine Fisheries Service ("NMFS") is an agency of the federal government within NOAA that has jurisdiction over whales under the Marine Mammal Protection Act ("MMPA"), 16 U.S.C. §§ 1361 - 1423h, and is in possession of the records requested by AWI.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

FACTS GIVING RISE TO PLAINTIFF'S CLAIM

A. FOIA Requirements

7. The purpose of FOIA is to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865, 869 (D.C. Cir. 2010) (quotations omitted). In enacting FOIA, Congress intended the primary objective of the Act to be the full disclosure of federal agency records so long as information is not exempted by clearly delineated statutory language. *Id.*

8. FOIA establishes a broad right of public access to federal agency records, subject only to nine delineated exemptions. 5 U.S.C. § 552(b). "Each agency, upon any request" for enumerated records must "determine within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such a request" of the "determination and the reasons therefor . . . ." *Id.* § 552(a)(6)(A)(i). A requester "shall be deemed to have exhausted [its]

administrative remedies"—and hence may file suit under the Act's citizen suit provision—"with respect to [a] request if the agency fails to comply with the . . . time limit" set forth in the statute for a substantive response. *Id.* § 552(a)(6)(C)(i).

9. The federal regulations implementing FOIA for NOAA and NMFS are located at 15 C.F.R. § 4.1, *et seq*. 15 C.F.R. § 4.6 codifies the requirement that NOAA/NMFS respond within 20 working days of receiving a FOIA request with a determination of compliance.

B. The Public Interest Need for the Documents Subject to the FOIA Request

10. In 2013, the documentary film *Blackfish* drew public attention to the plight of Tilikum, an orca held in captivity by SeaWorld Parks & Entertainment ("SeaWorld"), and other orcas now maintained in aquariums and theme parks around the world. *Blackfish* set off a strong negative public reaction to SeaWorld and the conditions under which orcas are held in captivity.

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[2] APHIS confirmed that, since 1994, it has not required licensees to submit necropsy reports for any marine mammals. As a result, it had no documents to release.

[3] The MMC's FOIA response indicates that NOAA/NMFS had not completed its consultation with its sister agencies on the legal question at the time it announced its conclusion on March 10, 2017.

[4] The MMC request revealed the limited nature of the AWI request, by identifying only nine responsive documents withheld based on the NOAA/NMFS position. The MMC letter also confirmed that it had coordinated its response "with the other agencies," indicating that NOAA/NMFS is aware of the FOIA request.

29. By email on September 29, 2017, FWS's Headquarters FOIA Office acknowledged receipt of the FOIA request. The email stated that the request was forwarded to the Division of Management Authority for processing.

30. The initial FOIA request letter to NMFS was confirmed delivered to NOAA/NMFS by AWI email on September 29, 2017. A follow-up letter was also sent by email to NMFS on December 4, 2017, asking for a response by December 15, 2017. Baur Decl. ¶ 3, Attachment B. Finally, on December 22, 2017, a copy of the December 4 letter was sent again by email, with a specific request that NMFS acknowledge receipt. *Id.* ¶ 4, Attachment C.

31. As of the date of this complaint, NOAA/NMFS has never even acknowledged receipt of the September 29, 2017 request, the December 4, 2017 follow-up letter, or the December 22, 2017 email confirmation request.

32. To date, more than three months after AWI's initial letter, and more than two months after the statutory deadline, NOAA/NMFS has not responded in any way to the September 29, 2017 AWI FOIA request. Nor has the Agency provided AWI with any explanation for the ongoing delay. The other agencies have either responded in full (APHIS and MMC) or acknowledged receipt and confirmed that review is underway (FWS).

CLAIM FOR RELIEF

33. AWI has a statutory right to the requested records. NOAA/NMFS, in violation of FOIA and AWI's rights under FOIA, has failed to provide the records, or any substantive determination regarding them, by the mandatory deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

REQUESTED RELIEF

34. AWI respectfully requests that the Court grant the following relief:

a. Declare that NMFS is in violation of FOIA;

b. Enjoin NMFS from continuing to withhold the requested records and order NMFS immediately to release the records in full to AWI;

c. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F)(i) that the "circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding . . . .";

d. Award Plaintiff its attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);

e. Award any other relief this Court finds just and proper.

Dated this 9th day of January, 2018

Respectfully submitted,

/s/Donald C. Baur

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(202) 654-6200
DBaur@perkinscoie.com

Sunny Tsou
(*pro hac vice* application pending)
Perkins Coie LLP
505 Howard Street
Suite 1000
San Francisco, CA 94105
(415) 344-7000
STsou@perkinscoie.com

Counsel for Plaintiff

From:	Georgia Hancock
To:	FOIA@noaa.gov; fwhq_foia@fws.gov; mmc@mmc.gov
Cc:	Baur, Don (WDC); Naomi Rose
Subject:	AWI FOIA to NOAA, FWS, MMC 9-29-2017
Attachments:	NOAA NMFS FWS MMC FOIA 9.29.17.pdf

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock
Of Counsel
georgia@awionline.org
mobile: 607-329-8638
Animal Welfare Institute
Visit us at awionline.org

Animal Welfare Institute

9903 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

September 29, 2017

VIA OVERNIGHT MAIL AND EMAIL

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

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Michael Gosliner
Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, Maryland 20814
mmc@mmc.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, January 18, 2018 4:47 PM
To: Stephen Lipps - NOAA Federal; Holmes, Colin; Scott Smullen - NOAA Federal; Jeff Dillen - NOAA Federal; Kristen Gustafson - NOAA Federal; Robert Hogan; _DUS Staff; Tanya Dobrzynski - NOAA Federal; Stuart.levenbach@noaa.gov; Kevin.Wheeler@noaa.gov; Brandon.Elsner@noaa.gov; Taylor.Jordan@noaa.gov; erik.noble@noaa.gov; Wendy.Lewis@noaa.gov
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; 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; Maria Williams - NOAA Federal; Shawn Martin - NOAA Federal; Kathryn Kempton - NOAA Federal; Ed Kearns - NOAA Federal; Cheryl Scannell - NOAA Federal; Devin Brakob - NOAA Federal; _OCIO GPD; Darone Jones - NOAA Federal
Subject: Weekly FOIA Incoming and High Visibility Requests
Attachments: AWI Original Request.pdf; 2018.01.08 AWI Complaint.pdf; Weekly FOIA Incoming and High Visibility Requests 01.10.18 - 01.17.18.xls

Good Afternoon,

Attached is the weekly report.

One request of note was received from Friends of Earth, seeking all records regarding Manna Fish Farms from January 1, 2016 to the present. (DOC-NOAA-2017-000587). The Manna Fish Farms aquaculture projects received some local press coverage in the fall (http://www.27east.com/news/article.cfm/East-Quogue/532310/First-Big-Piece-Of-Fish-Farm-Puzzle-Arrives-On-East-End). Friends of Earth is a prior FOIA litigant from two prior FOIA requests, including the Queen Conch ESA FOIA litigation and the Cook Inlet Beluga Whales FOIA litigation respectively.

A request was also received from PEER, seeking records regarding actions taken by NOAA to comply with the requirements of the Animal Welfare Act by OAR and NOS. (DOC-NOAA-2018-000572). PEER was a prior FOIA litigant with NOAA in the Observer electronic-monitoring FOIA lawsuit.

In litigation, NOAA was sued by the Animal Welfare Institute premised on constructive denial of their FOIA request. The original request sought records regarding the Public Display Permit NMFS issued for Tilikum the orca whale as well as records about the determination that the necropsy/clinical history requirements for the associated permit were effectively extinguished by the 1994 amendments to the MMPA. The Tilikum orca was the subject of the movie "Blackfish" and has received significant media attention (see, e.g., https://www.msn.com/en-nz/news/world/seaworld-killer-whale-tilikum-of-blackfish-movie-fame-dies/ar-BBxYJcN). (b)(5) [redacted] A copy of the original request and Complaint are attached.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [redacted] (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

ANIMAL WELFARE INSTITUTE 900 Pennsylvania Avenue, SE Washington, D.C. 20003, Plaintiff, v. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, 1401 Constitution Avenue, NW, Room 5128 Washington, D.C. 20230 and NATIONAL MARINE FISHERIES SERVICE, 1315 East-West Highway Silver Spring, MD 20910, Defendants.	)	Civ. No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Animal Welfare Institute brings this action against defendants National Oceanic and Atmospheric Administration and National Marine Fisheries Service for violations of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

PARTIES

2. Plaintiff Animal Welfare Institute ("AWI") is a 501(c)(3) non-profit organization that seeks to protect animals from human inflicted suffering. In particular, AWI has advocated for the protection of whales and other marine life from life from human activities such as harmful fishing practices, hunting, underwater noise production, and inhumane practices resulting from captive maintenance for purposes of public display and scientific research. AWI is the requester of the records at issue.

3. Defendant National Oceanic and Atmospheric Administration ("NOAA") is an agency of the federal government within the U.S. Department of Commerce that focuses on the conditions of the oceans and the atmosphere, including marine wildlife.

4. Defendant National Marine Fisheries Service ("NMFS") is an agency of the federal government within NOAA that has jurisdiction over whales under the Marine Mammal Protection Act ("MMPA"), 16 U.S.C. §§ 1361 - 1423h, and is in possession of the records requested by AWI.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

FACTS GIVING RISE TO PLAINTIFF'S CLAIM

A. FOIA Requirements

7. The purpose of FOIA is to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865, 869 (D.C. Cir. 2010) (quotations omitted). In enacting FOIA, Congress intended the primary objective of the Act to be the full disclosure of federal agency records so long as information is not exempted by clearly delineated statutory language. *Id.*

8. FOIA establishes a broad right of public access to federal agency records, subject only to nine delineated exemptions. 5 U.S.C. § 552(b). "Each agency, upon any request" for enumerated records must "determine within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such a request" of the "determination and the reasons therefor . . . ." *Id.* § 552(a)(6)(A)(i). A requester "shall be deemed to have exhausted [its]

administrative remedies"—and hence may file suit under the Act's citizen suit provision—"with respect to [a] request if the agency fails to comply with the . . . time limit" set forth in the statute for a substantive response. *Id.* § 552(a)(6)(C)(i).

9. The federal regulations implementing FOIA for NOAA and NMFS are located at 15 C.F.R. § 4.1, *et seq*. 15 C.F.R. § 4.6 codifies the requirement that NOAA/NMFS respond within 20 working days of receiving a FOIA request with a determination of compliance.

B. The Public Interest Need for the Documents Subject to the FOIA Request

10. In 2013, the documentary film *Blackfish* drew public attention to the plight of Tilikum, an orca held in captivity by SeaWorld Parks & Entertainment ("SeaWorld"), and other orcas now maintained in aquariums and theme parks around the world. *Blackfish* set off a strong negative public reaction to SeaWorld and the conditions under which orcas are held in captivity.

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[2] APHIS confirmed that, since 1994, it has not required licensees to submit necropsy reports for any marine mammals. As a result, it had no documents to release.

[3] The MMC's FOIA response indicates that NOAA/NMFS had not completed its consultation with its sister agencies on the legal question at the time it announced its conclusion on March 10, 2017.

[4] The MMC request revealed the limited nature of the AWI request, by identifying only nine responsive documents withheld based on the NOAA/NMFS position. The MMC letter also confirmed that it had coordinated its response "with the other agencies," indicating that NOAA/NMFS is aware of the FOIA request.

29. By email on September 29, 2017, FWS's Headquarters FOIA Office acknowledged receipt of the FOIA request. The email stated that the request was forwarded to the Division of Management Authority for processing.

30. The initial FOIA request letter to NMFS was confirmed delivered to NOAA/NMFS by AWI email on September 29, 2017. A follow-up letter was also sent by email to NMFS on December 4, 2017, asking for a response by December 15, 2017. Baur Decl. ¶ 3, Attachment B. Finally, on December 22, 2017, a copy of the December 4 letter was sent again by email, with a specific request that NMFS acknowledge receipt. *Id.* ¶ 4, Attachment C.

31. As of the date of this complaint, NOAA/NMFS has never even acknowledged receipt of the September 29, 2017 request, the December 4, 2017 follow-up letter, or the December 22, 2017 email confirmation request.

32. To date, more than three months after AWI's initial letter, and more than two months after the statutory deadline, NOAA/NMFS has not responded in any way to the September 29, 2017 AWI FOIA request. Nor has the Agency provided AWI with any explanation for the ongoing delay. The other agencies have either responded in full (APHIS and MMC) or acknowledged receipt and confirmed that review is underway (FWS).

CLAIM FOR RELIEF

33. AWI has a statutory right to the requested records. NOAA/NMFS, in violation of FOIA and AWI's rights under FOIA, has failed to provide the records, or any substantive determination regarding them, by the mandatory deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

REQUESTED RELIEF

34. AWI respectfully requests that the Court grant the following relief:

a. Declare that NMFS is in violation of FOIA;

b. Enjoin NMFS from continuing to withhold the requested records and order NMFS immediately to release the records in full to AWI;

c. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F)(i) that the "circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding . . . .";

d. Award Plaintiff its attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);

e. Award any other relief this Court finds just and proper.

Dated this 9th day of January, 2018

Respectfully submitted,

/s/Donald C. Baur

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(202) 654-6200
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Sunny Tsou
(*pro hac vice* application pending)
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Suite 1000
San Francisco, CA 94105
(415) 344-7000
STsou@perkinscoie.com

Counsel for Plaintiff

From:	Georgia Hancock
To:	FOIA@noaa.gov; fwhq_foia@fws.gov; mmc@mmc.gov
Cc:	Baur, Don (WDC); Naomi Rose
Subject:	AWI FOIA to NOAA, FWS, MMC 9-29-2017
Attachments:	NOAA NMFS FWS MMC FOIA 9.29.17.pdf

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock
Of Counsel
georgia@awionline.org
mobile: 607-329-8638
Animal Welfare Institute
Visit us at awionline.org

Animal Welfare Institute

9903 Pennsylvania Avenue, SE, Washington, DC 20003
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

September 29, 2017

VIA OVERNIGHT MAIL AND EMAIL

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

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwhq_foia@fws.gov

Michael Gosliner
Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, Maryland 20814
mmc@mmc.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*., and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

Sincerely,

/s/ Georgia Hancock
Georgia Hancock, Esq.
Of Counsel
Animal Welfare Institute
georgia@awionline.org
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)
Don Baur, Esq. (via electronic mail)

Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2018-000590	Request	Rose Santos	FOIA GROUP INC	01/17/2018
DOC-NOAA-2018-000589	Request	Rose Santos	FOIA GROUP INC	01/17/2018
DOC-NOAA-2018-000587	Request	Hallie G. Templeton	Friends of the Earth	01/17/2018
DOC-NOAA-2018-000582	Request	Joel P. Angeles		01/17/2018
DOC-NOAA-2018-000572	Request	Jeff Ruch	PEER	01/16/2018
DOC-NOAA-2018-000585	Request	Andrew Hitchings	SOMACH SIMMONS & DUN	01/16/2018
DOC-NOAA-2018-000565	Request	Matthew Owens		01/12/2018
DOC-NOAA-2018-000563	Request	Stephanie Kuzydym	KHOU-TV	01/12/2018
DOC-NOAA-2018-000562	Request	Stephanie Kuzydym	KHOU-TV	01/12/2018
DOC-NOAA-2018-000561	Request	Stephanie Kuzydym	KHOU-TV	01/12/2018

Custom Report - 01/18/2018 04:14:

Received	Assigned To	Case File Assigned To	Perfected?	Due	Closed Date
01/17/2018	NOAA	NOAA	No	TBD	TBD
01/17/2018	NOAA	NOAA	No	TBD	TBD
01/17/2018	NOAA	NOAA	No	TBD	TBD
01/17/2018	NOAA	NOAA	No	TBD	TBD
01/16/2018	NOAA	NOAA	No	TBD	TBD
01/16/2018	NOAA	NOAA	Yes	02/14/2018	TBD
01/12/2018	Kehaupuaokal Kamaka	Kehaupuaokal Kamaka	Yes	02/14/2018	TBD
01/12/2018	Lola Stith	Lola Stith	No	TBD	01/17/2018
01/12/2018	Lola Stith	Lola Stith	No	TBD	01/17/2018
01/12/2018	NWS	NWS	Yes	02/14/2018	TBD

11

Status	Dispositions
Submitted	
Submitted	
Submitted	
Assignment Determination	
Initial Evaluation	
Initial Evaluation	
Assignment Determination	
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Assignment Determination	

Detail

[FGI 18- 55919] Relevant to DOCAB133018CN0002, we seek copy of the contract SOW/PWS; and attachments
[FGI 18- 55918] Relevant to DOCAB133018CN0003, we seek copy of the contract SOW/PWS; and attachments
Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Friends of the Earth requests all records
Hello, Hope this message finds you well. I worked on the NPOESS NPP/JPSS (VIIRS) program from 2005-2008. I
See attached
The request seeks all records and documents subject to disclosure under FOIA within the following nine categories
Request directed to National Marine Fisheries Service, Pacific Islands Regional Office. Please see attached files.
January 12, 2018 Pursuant to the Freedom of Information Act, KHOU-TV respectfully requests: Copies of any and
January 12, 2018 Pursuant to the Freedom of Information Act, KHOU-TV respectfully requests: Copies of any and
January 12, 2018 Pursuant to the Freedom of Information Act, KHOU-TV respectfully requests: Copies of any and

pertaining to Manna Fish Farms or its Chief Executive Officer, Donna Lanzetta, from January 1, 2016 to
would like to request any contract pertaining to this program for this time period. This was also under N(

s of records. In this request, we use the terms "National Oceanic and Atmospheric Administration F
Freedom of Information Act request for fisheries data from Tri Marine owned and other US flagged tuna
all email between August 23 to August 30 sent or received by National Hurricane Director deputy directo
all email between August 23 to August 30 sent or received by Storm Prediction Center director Russell S
all email between August 23 to August 30 sent or received by Weather Prediction Center director David

present.
OAA Contract No. 50-SPNA-9-00010 http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.201.280

Fisheries" (NOAA Fisheries) and "National Marine Fisheries Service" (NMFS). All such
purse seine vessels operating in the Western and Central Pacific Fisheries Commission (WCPFC) conv
or Ed Rappaport, Warning Coordinator Meteorologist Daniel Brown and Senior Hurricane Specialists Lixi
Schneider, Warning coordinator meteorologist Patrick Marsh, Branch Chief Bill Bunting and Lead Foreca
Novak, deputy director Kathy Gilbert, administrative officer Crystal Rickett and secretary Dawn Cyrus inc

5&rep=rep1&type=pdf Please expedite and send me the contract asap. Thank you so much fo

usages refer to the United States Department of Commerce, National Oceanic and Atmospheric Admin
vention area. The Tri Marine-specific data request is for fisheries data for activities in the WCPFC conve
ion Avila, Jack Beven, Michael Brennan, Richard Pasch and Stacy R. Stewart, including the keyword(s):
asters Roger Edwards, Jeremy Grams, Jared Guyer, John Hart and Rich Thompson, including the keyw
cluding the keyword(s): • rain • flood • Houston • Hurricane • Harvey • tropical storm • inches • disaster

or your time and help. Sincerely, Joel Angeles

istration, National Marine Fisheries Service, and their employees, agents, attorneys, and consultants. In
ention area for 2012, 2013, 2014, 2015, and 2016, for fishing vessels Cape Breton, Cape Cod, Cape Eliz
• rain • flood • Houston • Hurricane • Harvey • tropical storm • inches • disaster If this information is avai
ord(s): • rain • flood • Houston • Hurricane • Harvey • tropical storm • inches • disaster If this information
Copies of any and all email between August 23 to August 30 sent or received by Storm Prediction Center

this request, we refer to the "Sacramen
zabeth
lable electronically, I prefer to receive i
is available electronically, I prefer to receive it vi
director Russell Schneide