



governmentattic.org

"Rummaging in the government's attic"

Description of document: Environmental Protection Agency (EPA) records provided to Chairman Darrell Issa, House Oversight and Government Reform Committee, concerning the administration of the Freedom of Information Act (FOIA), 2011

Requested: 10-December-2011

Released date: 10-May-2012

Posted date: 28-May-2012

Source of document: National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
Fax: (202) 566-2147
E-mail: hq.foia@epa.gov
[Online FOIA request form](#)

Note: This is one of several files on the same subject for various agencies available on governmentattic.org. See: <http://www.governmentattic.org/5docs/chairmanIssa.htm>

The governmentattic.org web site ("the site") is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 10 2012

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

RE: Freedom of Information Act Request HQ-FOI-00401-12

This is in response to your Freedom of Information Act (FOIA) request dated December 10, 2011, requesting an electronic copy of the records provided to the Honorable Chairman Darrell Issa, who had in January 2011 asked the Environmental Protection Agency for various data concerning the administration of the Freedom of Information Act and any correspondence sent to Chairman Issa's office on the subject of FOIA. Enclosed are copies of documents that are responsive to your request.

If you have any concerns, you may appeal this response in writing to the National Freedom of Information Act Officer at:

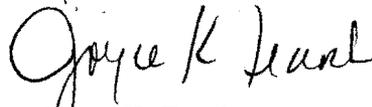
Records, FOIA, and Privacy Branch
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
Fax: (202) 566-2147
Email: hq.foia@epa.gov

Please note that only correspondence mailed through the United States Postal Service can be delivered to the address above. If you want to deliver your appeal in person, via courier service, or via an overnight delivery service, you must address your correspondence to 1301 Constitution Avenue, NW, Room 6416J, Washington, DC 20001.

Your appeal must be submitted no later than 30 calendar days from the date of this letter and should include the request number listed above. The agency will not consider appeals received after the 30 calendar-day limit. For the quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

If you have any questions regarding this response, please contact Loreto Tillery, FOIA Coordinator at (202) 564-2791.

Sincerely,

A handwritten signature in black ink, appearing to read "Joyce K. Frank". The signature is written in a cursive style with a large initial "J".

Joyce K. Frank
Principal Deputy Associate Administrator

Enclosures

**TESTIMONY
OF
LARRY F. GOTTESMAN
NATIONAL FREEDOM OF INFORMATION OFFICER
OFFICE OF ENVIRONMENTAL INFORMATION
U.S. ENVIRONMENTAL PROTECTION AGENCY**

***Information Policy, Census, and National
Archives Subcommittee
Of the
Oversight and Government Reform Committee***

***Thursday, March 18, 2010
2154 Rayburn HOB
2:00 p.m.***

***“Administration of the Freedom of Information Act: Current
Trends.”***

Good afternoon Chairman Clay, Ranking Member McHenry, and Members of the Subcommittee. My name is Larry Gottesman, the U.S. Environmental Protection Agency's (EPA's) Freedom of Information (FOI) Officer. I am pleased to appear before you today to discuss EPA's Freedom of Information Act program during Sunshine Week.

EPA is committed to the letter and spirit of the Administration's Open Government and Transparency goals. EPA demonstrates this commitment by constantly striving for reductions in processing time for initial FOIA requests and administrative appeals. EPA recognizes that emerging technology creates new opportunities for improving the FOIA processes throughout the federal sector, and continues to collaborate with other federal agencies in this regard.

Administrator Jackson issued a memorandum to all employees on April 23, 2009 that communicated her commitment to "Transparency in EPA's Operations". The Administrator said, "As President Obama stated, the Freedom of Information Act should be administered with a clear presumption that openness prevails. All Agency personnel should ensure that this principle of openness is applied to the extent possible when responding to a FOIA request. Managers should give their staffs and the Agency's FOI professionals the support needed to satisfy FOIA's transparency requirement in as timely and efficient a manner as possible. In accordance with guidance issued by Attorney General Holder on March 19, 2009, EPA offices should exercise their discretion in favor of disclosing documents whenever possible under the FOIA. Offices should assert an exemption to disclosure only where the Agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law. Offices should also take steps to make information public on the Agency's Web site without waiting for a request from the public to do so."

I would like to take a few minutes to explain how EPA is addressing the FOIA backlog, striving to improve timeliness, exploring new technology, and embracing the mandate for greater transparency.

Backlog

First and foremost, the Agency's FOIA backlog has decreased dramatically. In July 2001, there were 23,514 overdue FOIA requests. EPA took aggressive steps to address this situation. EPA revised FOIA procedures and processes, deployed updated information technology tools, and collaborated with subject matter experts across the

Agency to eliminate overdue FOIA requests. In a 2006 report to the Department of Justice (DOJ), the Agency stated that it may always have a backlog given the number and complexity of FOIA requests that it receives. Nevertheless, EPA committed to reducing its backlog to not more than 10 percent of new FOIA requests each year. EPA has met this aggressive milestone since 2007 and continued to exceed this performance level in all subsequent years. EPA received 10,404 requests in FY 2009; however, its total backlog was just 332 at the end of fiscal year 2009, or just over 3% of all incoming requests. Furthermore, the number of overdue FOIA appeals has decreased significantly even though the number of appeals has increased. At the end of FY 2009, the number of overdue appeals was reduced to 79. The lessons learned over the years have positioned EPA to maintain low backlog and high customer service that are integral to open government.

Timeliness

In spite of EPA's dramatic reduction of overdue requests, the Agency continues to seek innovative ways to improve its responsiveness. For example, each year the Agency receives thousands of FOIA requests seeking information on specific parcels of land as part of the due diligence in real estate transactions. The Agency is creating an online-searchable database that will make this information readily available to the public, thereby reducing the need for FOIA requests. By proactively disclosing environmental information before it becomes the subject of a FOIA request, EPA will significantly reduce the time required for the public we serve to access the information we maintain.

EPA also reduced the response time for issuing decisions on fee waivers, and expedited processing requests by centralizing these processes within its headquarters National FOI staff. The consolidation ensures that the same high standards of timeliness and law are applied to each decision issued by the Agency. EPA conducts annual FOIA trainings for its employees. Monthly meetings are held with the Agency's headquarters and regional FOI contacts by the Agency FOI Officer.

Technology

The Agency continues to look at new technologies to assist the processing of FOIA requests, particularly the processing of email and electronic records. EPA developed a software application for processing large e-mail searches and responses. The application allows for duplicate email messages to be identified and removed, facilitating more timely review and processing. In addition, the National FOI Program currently is collaborating with Agency information technology staff to improve the efficiency for conducting key word searches on the Agency's e-mail servers. This service will expedite FOIA searches and assure that all responsive e-mails maintained on the Agency's e-mail system are identified.

EPA also deployed redaction software to help process electronic records. The application uses "pixel" replacement to permanently remove information being withheld from disclosure, eliminating the risk associated with technologies that electronically "white out" information which can later be restored. The redaction software expedites the processing of FOIA responses while protecting information that should not be released.

Transparency

The Agency embraced the mandate for greater transparency. EPA posted data bases to its Web site containing information frequently requested under FOIA. For example, an individual desiring to export an automobile is required to produce a certificate issued by EPA. In the past, the individual had to make a FOIA request for the certification and then wait for the Agency to respond to the request. Promoting transparency, quicker access and accountability, EPA's FOI Officer worked with the Agency's Office of Air and Radiation to make the database available online. The public can now go directly to EPA's FOIA Web site (epa.gov/foia) and print the certificate(s) in seconds without having to file a FOIA request; previously, the public had to wait days or weeks to obtain the necessary documentation after submitting a request. In addition, the Agency recently launched a Web page in March 2009 that allows requesters to easily obtain the status of their FOIA requests on the "Status of My FOIA Request" site at http://www.epa.gov/foia/foia_request_status.html.

EPA's Office of Pesticide Programs (OPP) completely redesigned its electronic FOIA reading room to make tens of thousands of highly sought after pesticide science and regulatory records publicly available without the filing of a FOIA request. OPP established a dual component electronic reading room by making documents available on its FOIA Website and on the *Regulations.gov* Web site. The OPP FOIA Web site provides access to approximately 13,000 OPP scientific reviews on 300 pesticide active ingredients. The *Regulations.gov* regulatory repository contains approximately 800 pesticide product registration working files comprising some 150,000 pages. Since making these highly sought after records available on the Web, FOIA requests for this

information have plummeted from twenty percent to three percent of all FOIA requests received by this office. The high demand scientific reviews and pesticide registration information are vital to industry, interest groups, state, local, and foreign governments, and many other stakeholders. Other parts of the Agency are exploring opportunities to use similar technology in proactively disclosing records.

EPA publishes extensive information on its Web site and continues to look for additional information to publish. Additionally, EPA continues to engage the public through FOIA Requester Forums held in conjunction with National and Regional training sessions. In the aftermath of Hurricane Katrina, EPA created a Web site to allow the public access to Hurricane-related information as soon as it became available at <http://www.epa.gov/katrina/>. While this site is no longer being updated it is still available to the public for reference purposes. Currently EPA is actively participating in the Data.gov effort by making datasets -- which have been accessible through Envirofacts and My Environment -- available now in open, downloadable formats that enhance access and support user creation of customized reports by individuals and businesses, reducing the need to file FOIA requests. The requested reports are often used for real estate transactions as part of the due diligence package. It is anticipated that this tool may reduce the number of Agency FOIA requests by 20 percent by allowing the public direct access to this environmental information.

Conclusion

In conclusion, EPA is proud of the accomplishments with its FOIA administration responsibilities and continues to proactively disclose information and reduce FOIA

requests for publicly available information. I would be pleased to answer any questions from the Subcommittee.

* * *



Key to status column in FOIAXpress

Denied in Part or Partial Grant/Denial: in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.

Due Date: The original date by which a requester may expect a response to a perfected request or the agreed upon date based on an extension.

Full Denial: an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.

Granted in Full: responsive records located and sent to the requester.

Other Reasons: See next column for explanation

Fee – waiting for fee waiver justification response

Litigation – request relates to case in Office of General Counsel or Office of Regional Counsel

Not a Proper FOIA Request – request from the public that does not fit under the definition of FOIA

No Records – no responsive records located

Referrals – Sent to another Agency

Withdrawn – requester no longer seeks the information

FOIA ANNUAL REPORT
FOR
10/01/2009
THROUGH
09/30/2010

The following **Annual Freedom of Information Act** report covers the Period 10/01/2009, through 09/30/2010, as required by 5 U.S.C. 552.

I. BASIC INFORMATION REGARDING REPORT

1. Name, Title, Address and Telephone Number
Larry F. Gottesman
National FOIA Officer
FOIA and Privacy Branch
Office of Environmental Information
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Mail Code 2822 T
Washington, D.C 20460
(202) 566-1667
2. Electronic address for Report on the agency Web site.
<http://www.epa.gov/foia>

3. How to obtain a copy of the Report in paper form.
National FOIA Office
FOIA and Privacy Branch
Office of Environmental Information
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Mail Code 2822 T
Washington, D.C 20460
(202) 566-1667

II. MAKING A FOIA REQUEST

1. For basic information on how to make a FOIA request, visit our website at <http://www.epa.gov/foia>

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

- | 1. Acronyms used | Served |
|-------------------------|--|
| HQ EPA | Headquarters |
| Region 1 | Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont |
| Region 2 | New Jersey, New York, Puerto Rico, U.S. Virgin Islands and 7 Tribal Nations |
| Region 3 | Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia |
| Region 4 | Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina |
| Region 5 | Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin |
| Region 6 | Arkansas, Louisiana, New Mexico, Oklahoma, Texas |
| Region 7 | Iowa, Kansas, Missouri, Nebraska |
| Region 8 | Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming |
| Region 9 | Arizona, California, Hawaii, Nevada, American Samoa, Guam |
| Region 10 | Alaska, Idaho, Oregon, Washington |

2. Basic terms expressed in common terminology

- a. **Administrative Appeal** - a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. **Average Number** - the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
- c. **Backlog** - the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. **Component** - for agencies that process requests on a decentralized basis, a "component" is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests.
- e. **Consultation** - the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** - a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request** - a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., "first-party" requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act "systems of records" or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant** - an agency decision to disclose all records in full in response to a FOIA request.

- i. **Full Denial** - an agency decision not to release any records in response to a FOIA request because the records are exempt in their entireties under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number** - the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. **Multi-Track Processing** - a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. **Expedited Processing** - an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
 - ii. **Simple Request** - a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request** - a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- l. **Partial Grant/Partial Denial** - in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
- m. **Pending Request or Pending Administrative Appeal** - a request or administrative appeal for which an agency has not taken final action in all respects.
- n. **Perfected Request** - a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
- o. **Processed Request or Processed Administrative Appeal** - a request or administrative appeal for which an agency has taken final action in all respects.
- p. **Range in Number of Days** - the lowest and highest number of days to process requests or administrative appeals.
- q. **Time Limits** - the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).

3. Include the following concise descriptions of the nine FOIA exemptions:
 - a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** internal agency rules and practices
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law
 - d. **Exemption 4:** trade secrets and other confidential business information
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6:** information involving matters of personal privacy
 - g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
 - h. **Exemption 8:** information relating to the supervision of financial institutions
 - i. **Exemption 9:** geological information on wells

IV. Exemption 3 Statutes

A. For Initial Requests				
Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency
F.R. Cr. P. 6(e)	Federal Rules of Criminal Procedure: Records relating to Grand Jury Investigations or Proceedings	Y	HQ : 1	1
FIFRA 7 U.S.C. 136h Sect. 10g	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. 136 h, Section 10 (g): Analytical, health, environmental effects and efficacy data that prohibits registrants from disclosing information to foreign competitors	Y	04 : 1 HQ : 17	18
FIFRA 7 U.S.C. 136h Sect. 10	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. 136h Section 10: Studies from registrants who engage in the distribution of pesticides in countries other than the U.S.	Y	HQ : 5	5
P.I.A. 41 U.S.C. 253b(m)(1)	Procurement Integrity Ad, 41 U.S.C. 253b(m)(1): Contract Proposal	Y	07 : 2	2
42 U.S.C Section 241(d)	42 U.S.C Section 241(d)	N	04 : 1 08 : 1	2

B. For Appeals				
Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency
FIFRA 7 U.S.C. 136h Sect. 10g	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. 136 h, Section 10 (g): Analytical, health, environmental effects and efficacy data that prohibits registrants from disclosing information to foreign competitors	Y	HQ : 2	2

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests				
	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
01	31	250	253	28
02	323	1758	1578	503
03	147	1436	1446	137
04	64	854	828	90
05	107	1600	1605	102
06	81	583	586	78
07	42	530	528	44
08	22	370	366	26
09	41	526	516	51
10	65	449	446	68
HQ	574	2053	1919	708
AGENCY OVERALL	1497	10409	10071	1835

B.(1) Disposition of FOIA Requests All Processed Requests

	Number of Full Grants	Number of Partial Grants/Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									TOTAL	
				No records	Referrals	Request withdrawn	Fee-related reason	Records not reasonably described	Not a proper FOIA request for some other reason	Not an agency record	Duplicate request	Other *Explain in chart below		
01	147	8	1	74	10	13	0	0	0	0	0	0	0	253
02	410	7	1	997	32	47	5	68	1	0	9	1	1578	
03	427	26	0	829	36	121	0	0	0	0	7	0	1446	
04	405	60	5	253	21	53	11	10	0	1	9	0	828	
05	659	58	4	822	1	37	4	7	2	1	10	0	1605	
06	247	39	4	211	46	32	1	0	1	1	3	1	586	
07	354	18	6	123	1	23	1	0	0	0	2	0	528	
08	197	13	1	75	0	75	2	0	0	0	3	0	366	
09	232	42	8	152	33	24	3	8	3	2	8	1	516	
10	268	54	2	70	0	47	1	2	1	0	1	0	446	
HQ	1099	282	68	202	38	165	11	8	8	7	27	4	1919	
AGENCY OVERALL	4445	607	100	3808	218	637	39	103	16	12	79	7	10071	

B.(2) Disposition of FOIA Requests Other Reasons for Full Denials Based on Reasons Other than Exemptions		
Component	Description of Other Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon	TOTAL
02	LITIGATION 1	1
06	FILE REVIEW 1	1
09	GLOMAR 1	1
HQ	GLOMAR 1 LITIGATION 2 FILE REVIEW 1	4

B.(3) Disposition of FOIA Requests Number of Times Exemptions Applied														
	(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)(A)	(b)(7)(B)	(b)(7)(C)	(b)(7)(D)	(b)(7)(E)	(b)(7)(F)	(b)(8)	(b)(9)
01	-	-	-	1	6	1	4	-	1	-	-	-	-	-
02	-	-	-	2	2	3	-	-	-	-	-	-	-	-
03	2	-	-	4	12	7	3	-	1	-	-	-	-	-
04	-	1	2	23	34	33	15	-	8	-	-	-	-	-
05	-	2	1	19	31	17	23	-	3	1	-	-	-	-
06	-	1	-	10	30	22	9	7	1	3	1	1	-	-
07	-	-	2	6	10	6	10	-	-	1	-	-	-	-
08	-	1	1	-	12	3	3	-	3	-	-	-	-	-
09	-	3	-	22	20	5	5	1	1	1	-	-	-	-
10	-	-	1	4	43	4	13	-	2	-	1	-	-	-
HQ	16	21	23	146	92	66	38	-	29	2	4	-	-	-
AGENCY OVERALL	18	29	30	237	292	167	123	8	49	8	6	1	-	-

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals				
	Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
HQ		110	204	215
AGENCY OVERALL		110	204	215

B. Disposition of Administrative Appeals All Processed Appeals					
	Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
HQ	83	33	32	67	215
AGENCY OVERALL	83	33	32	67	215

C.(1) Reasons for Denial on Appeal Number of Times Exemptions Applied														
	(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)(A)	(b)(7)(B)	(b)(7)(C)	(b)(7)(D)	(b)(7)(E)	(b)(7)(F)	(b)(8)	(b)(9)
HQ	-	1	2	13	25	9	16	-	2	-	2	-	-	-
AGENCY OVERALL	-	1	2	13	25	9	16	1	2	-	2	-	-	-

C.(2) Reasons for Denial on Appeal Reasons Other than Exemptions								
	Fee-related reason	Duplicate Request	No records	Records not reasonably described	Request withdrawn	Request in Litigation	Other	TOTAL
							*Explain in chart below	
HQ	5	7	3	-	39	4	9	67
AGENCY OVERALL	5	7	3	-	39	4	9	67

C.(3) Reasons for Denial on Appeal Other Reasons		
Component	Description of Other Reasons for Denials from Chart C (2) & Number of Times Those Reasons Were Relied upon	TOTAL
HQ	Referrals 2 Not a proper FOIA request for some other reason 3 Not an agency record 1 LITIGATION 1 FILE REVIEW 2	9

C.(4) Response Time for Administrative Appeals												
	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
HQ	29	190.22	0	2256	-	-	-	-	-	-	-	-
AGENCY OVERALL	29	190.22	0	2256	-	-	-	-	-	-	-	-

C.(5) Ten Oldest Pending Administrative Appeals										
	10th Oldest Appeal and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal and Number of Days Pending
HQ	02/22/2006 1155	01/09/2006 1185	01/03/2006 1189	11/29/2005 1212	11/29/2005 1212	11/29/2005 1212	05/10/2005 1351	02/20/2003 1909	01/23/2003 1928	11/20/2002 1970
AGENCY OVERALL	02/22/2006 1155	01/09/2006 1185	01/03/2006 1189	11/29/2005 1212	11/29/2005 1212	11/29/2005 1212	05/10/2005 1351	02/20/2003 1909	01/23/2003 1928	11/20/2002 1970

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

A. Processed Requests Response Time for All Processed Perfected Requests

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
01	15	19.82	<1	298	55	187	32	474	5	5	5	5
02	55	69.24	<1	435	75	82.55	<1	151	12	13	3	25
03	21	20.58	<1	123	43.5	68.24	<1	721	24	24	24	24
04	18	20.57	<1	224	53	74.73	4	256	7.5	7.5	4	11
05	15	15.7	<1	130	56	105.47	<1	558	9	10	1	18
06	26	44.01	<1	783	315.5	359	17	788	8	22.25	7	66
07	18	18.68	<1	92	36.5	60.75	6	164	6	6	6	6
08	9	11.9	<1	130	70	74.83	20	148	3.5	3.5	<1	9
09	20	22.68	<1	207	89	171.67	2	730	22	22	22	22
10	17	31.13	<1	1165	39	62.35	<1	326	12	8.67	1	13
HQ	20	63.34	<1	1436	111	245.67	<1	959	12	14.36	<1	44
AGENCY OVERALL	19	36.41	<1	1436	51	93.74	<1	959	9	13.08	<1	66

B. Processed Requests Response Time for Perfected Requests in Which Information Was Granted												
	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
01	17	23.12	<1	248	55	187	32	474	-	-	-	-
02	53	68.2	2	251	101	95.12	17	151	12	13	3	25
03	21	21.62	<1	110	44.5	63.73	<1	283	-	-	-	-
04	19	21.94	<1	224	54.5	80.4	13	256	-	-	-	-
05	16	18.4	<1	130	66	123.12	13	558	16	16	16	16
06	25	43.42	<1	549	553	452.67	17	788	37.5	37.5	9	66
07	19	19.59	1	92	6	6	6	6	6	6	6	6
08	13	14.02	<1	130	50	70.4	20	148	3.5	3.5	<1	9
09	20	24.32	<1	207	72	66.33	15	165	22	22	22	22
10	18	28.94	<1	334	45	75.91	<1	326	12.5	12.5	12	13
HQ	20	53.38	<1	1398	227	255	45	483	12	12.56	<1	44
AGENCY OVERALL	19	34.81	<1	1398	55.5	94.89	<1	788	12	14.36	<1	66

C. Processed Requests Response Time in Day Increments															
Simple Requests															
	< 1 Day	1-20 Days	21- 40 Days	41- 60 Days	61- 80 Days	81- 100 Days	101- 120 Days	121- 140 Days	141- 160 Days	161- 180 Days	181- 200 Days	201- 300 Days	301- 400 Days	401+ Days	TOTAL
01	28	142	57	15	3	1	-	-	-	1	-	3	-	-	250
02	59	95	332	193	69	165	105	134	99	9	7	10	-	1	1278
03	23	630	605	53	7	2	2	1	-	-	-	-	-	-	1323
04	14	516	204	32	9	6	2	3	2	1	-	1	-	-	790
05	22	1358	146	33	12	3	1	1	-	-	-	-	-	-	1576
06	12	172	226	78	31	8	12	1	4	3	-	3	4	10	564
07	2	381	127	9	2	2	-	-	-	-	-	-	-	-	523
08	66	233	44	12	-	1	-	1	-	-	-	-	-	-	357
09	10	247	196	32	8	2	4	-	-	-	-	1	-	-	500
10	12	256	96	20	6	4	4	2	2	2	2	7	1	2	416
HQ	61	906	439	111	72	48	40	36	25	18	10	45	22	65	1898
AGENCY OVERALL	309	4936	2472	588	219	242	170	179	132	34	19	70	27	78	9475

Complex Requests															
Simple Requests	< 1 Day	1-20 Days	21- 40 Days	41- 60 Days	61- 80 Days	81- 100 Days	101- 120 Days	121- 140 Days	141- 160 Days	161- 180 Days	181- 200 Days	201- 300 Days	301- 400 Days	401+ Days	TOTAL
01	-	-	1	1	-	-	-	-	-	-	-	-	-	1	3
02	1	1	4	6	4	2	1	9	3	-	-	-	-	-	31
03	1	6	37	21	4	5	6	3	4	-	-	4	-	1	92
04	-	4	8	8	3	2	-	3	1	2	1	1	-	-	33
05	1	2	5	3	1	3	1	-	-	1	-	-	-	2	19
06	-	1	-	-	1	-	-	-	-	-	-	-	-	2	4
07	-	2	-	1	-	-	-	-	-	1	-	-	-	-	4
08	-	1	-	2	-	2	-	-	1	-	-	-	-	-	6
09	-	3	1	1	2	2	-	-	-	1	-	3	-	2	15
10	2	2	5	2	2	-	1	2	-	-	-	-	1	-	17
HQ	2	1	-	1	-	-	1	-	-	-	-	1	-	3	9
AGENCY OVERALL	7	23	61	46	17	16	10	17	9	5	1	9	1	11	233

Requests Granted Expedited Processing

Simple Requests	< 1 Day	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
01	-	1	-	-	-	-	-	-	-	-	-	-	-	-	1
02	-	3	1	-	-	-	-	-	-	-	-	-	-	-	4
03	-	-	1	-	-	-	-	-	-	-	-	-	-	-	1
04	-	2	-	-	-	-	-	-	-	-	-	-	-	-	2
05	-	5	-	-	-	-	-	-	-	-	-	-	-	-	5
06	-	3	-	-	1	-	-	-	-	-	-	-	-	-	4
07	-	1	-	-	-	-	-	-	-	-	-	-	-	-	1
08	1	1	-	-	-	-	-	-	-	-	-	-	-	-	2
09	-	-	1	-	-	-	-	-	-	-	-	-	-	-	1
10	-	3	-	-	-	-	-	-	-	-	-	-	-	-	3
HQ	2	7	4	1	-	-	-	-	-	-	-	-	-	-	14
AGENCY OVERALL	3	26	7	1	1	-	-	-	-	-	-	-	-	-	38

D. Pending Requests All Pending Perfected Requests									
	SIMPLE			COMPLEX			EXPEDITED PROCESSING		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
01	24	4.5	20.25	2	374.5	374.5	-	-	-
02	728	63	82.23	8	29	76	-	-	-
03	136	9	11.65	27	34	68.19	-	-	-
04	3	79	181.33	-	-	-	-	-	-
05	8	14	68.62	-	-	-	-	-	-
06	87	20	49.98	2	707.5	707.5	-	-	-
07	40	3.5	7.52	2	189.5	189.5	-	-	-
08	19	3	13.53	4	80.5	140.75	-	-	-
09	46	8	11.37	3	68	156.33	-	-	-
10	66	22	56.35	3	34	33	-	-	-
HQ	682	99	221.51	6	652	695	6	154	272.17
AGENCY OVERALL	1839	52	121.4	57	53	180.58	6	154	272.17

E. Pending Requests Ten Oldest Pending Perfected Requests										
	10th Oldest Request and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request and Number of Days Pending
01	09/20/2010 8	09/17/2010 10	09/15/2010 11	09/15/2010 11	09/02/2010 19	08/12/2010 36	07/10/2010 49	06/15/2010 61	01/06/2009 400	05/01/2007 840
02	10/06/2009 249	10/06/2009 249	10/06/2009 249	10/06/2009 249	10/01/2009 250	10/01/2009 250	10/01/2009 250	10/01/2009 250	08/21/2009 265	06/16/2009 327
03	09/10/2010 73	06/04/2010 82	05/17/2010 95	05/04/2010 104	04/29/2010 107	04/22/2010 112	02/09/2010 200	12/04/2009 218	11/09/2009 224	06/03/2009 317
04								09/30/2010 8	08/03/2010 79	12/08/2008 457
05			09/29/2010 11	09/27/2010 12	09/27/2010 12	09/26/2010 12	09/22/2010 16	08/24/2010 34	12/16/2009 208	03/03/2010 244
06	04/21/2010 113	03/16/2010 139	11/16/2009 220	11/06/2009 225	08/03/2009 292	07/14/2009 306	05/11/2009 350	03/04/2009 639	01/05/2008 687	11/02/2007 728
07	09/14/2010 13	09/14/2010 13	09/10/2010 15	09/10/2010 16	06/04/2010 19	06/01/2010 21	05/26/2010 25	05/26/2010 25	05/25/2010 28	04/07/2009 374
08	09/25/2010 4	09/19/2010 10	09/13/2010 13	09/09/2010 15	09/09/2010 15	08/18/2010 30	06/29/2010 65	05/10/2010 96	02/03/2010 166	03/03/2009 399
09	09/08/2010 17	09/03/2010 18	08/30/2010 21	08/26/2010 22	08/16/2010 27	07/28/2010 43	06/18/2010 68	06/13/2010 72	06/02/2010 75	05/04/2009 358
10	03/31/2010 128	03/08/2010 145	02/25/2010 152	02/24/2010 153	02/09/2010 163	02/03/2010 165	12/02/2009 209	11/17/2009 222	02/23/2009 405	08/18/2008 531
HQ	06/15/2005 1327	06/08/2005 1333	05/25/2005 1342	05/06/2005 1353	03/18/2005 1389	03/08/2005 1396	01/28/2005 1422	01/05/2005 1438	01/04/2005 1439	12/01/2004 1461
AGENCY OVERALL	06/15/2005 1327	06/08/2005 1333	05/25/2005 1342	05/06/2005 1353	03/18/2005 1389	03/08/2005 1396	01/28/2005 1422	01/05/2005 1438	01/04/2005 1439	12/01/2004 1461

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing					
	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
01	1	3	<1	<1	4
02	3	17	4	5.1	16
03	1	11	2	2.66	12
04	2	13	6	6.6	13
05	5	9	5	4.92	13
06	4	11	6	5.06	13
07	1	1	7	7	2
08	2	6	4	5.12	7
09	1	8	8	9	6
10	3	8	3	3.63	11
HQ	20	76	5	5.67	80
AGENCY OVERALL	43	163	5	5.34	178

B. Requests for Fee Waiver				
	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
01	14	2	3	5.43
02	11	10	6	6.52
03	25	21	4	4.04
04	31	23	3.5	4.92
05	28	20	4	5.47
06	22	18	4.5	7.5
07	12	1	5	5.07
08	18	5	3	4.39
09	13	11	6	6.16
10	22	18	4	6.2
HQ	143	73	4	6.9
AGENCY OVERALL	339	202	4	6.12

IX. FOIA PERSONNEL AND COSTS

	PERSONNEL			COSTS		
	Number of Full-Time FOIA Employees	Number of Equivalent Full-Time FOIA Employees	Total Number of Full-Time FOIA Staff	Processing Costs	Litigation-Related Costs	Total Costs
01	0	3.00	3.00	\$465,892.64	\$0.00	\$465,892.64
02	5	3.77	8.77	\$1,395,149.41	\$0.00	\$1,395,149.41
03	6	0.00	6.00	\$934,383.79	\$0.00	\$934,383.79
04	12	0.67	12.67	\$1,947,478.77	\$11,467.66	\$1,958,946.43
05	7	9.3	16.30	\$2,798,936.06	\$0.00	\$2,798,936.06
06	2	0.00	2.00	\$328,242.87	\$0.00	\$328,242.87
07	2	0.00	2.00	\$589,570.78	\$0.00	\$589,570.78
08	5	0.67	5.67	\$940,125.00	\$0.00	\$940,125.00
09	1	9	10.00	\$1,508,245.59	\$0.00	\$1,508,245.59
10	0	2.0	2.00	\$321,032.00	\$0.00	\$321,032.00
HQ	11	46.0	58.50	\$9,300,000.00	\$450,000.00	\$9,750,000.00
AGENCY OVERALL	57	74.41	130.41	\$20,529,056.91	\$461,467.66	\$20,990,524.57

(*) - FTE = \$150K.

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
01	\$2,250.57	0.48
02	\$32,104.33	2.3
03	\$37,080.11	3.97
04	\$22,444.63	1.14
05	\$37,577.67	1.34
06	\$20,647.68	6.29
07	\$170,484.99	28.91
08	\$15,143.85	1.61
09	\$12,440.56	0.82
10	\$23,459.17	7.30
HQ	\$90,575.14	0.92
AGENCY OVERALL	\$464,208.70	2.21

XI. FOIA Regulations (Including Fee Schedule)

For more information, please consult the EPA FOI Regulations. They can be found at the following website: <http://www.epa.gov/foia/foiareg.htm>

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals		
	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
01	0	-
02	30	-
03	0	-
04	0	-
05	0	-
06	11	-
07	0	-
08	0	-
09	0	-
10	3	-
HQ	285	77
AGENCY OVERALL	329	77

Discuss/Explain the backlog here(Optional)

--

B. Consultations on FOIA Requests Received, Processed, and Pending Consultations				
	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at EPA as of <u>Start</u> of the Fiscal Year	Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Processed</u> by EPA During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at EPA as of <u>End</u> of the Fiscal Year
AGENCY OVERALL	11	44	28	27

C. Consultations on FOIA Requests Ten Oldest Consultations Received from Other Agencies and Pending at EPA										
	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
AGENCY OVERALL	1/6/2010 183	1/4/2010 185	12/15/2009 198	12/2/2009 207	11/9/2009 223	8/19/2009 280	9/25/2008 505	9/23/2008 506	12/20/2006 948	1/30/2006 1171

D. Comparison of Numbers of Requests from Previous and Current Annual Report Requests Received, Processed, and Backlogged

	NUMBER OF REQUESTS RECEIVED		NUMBER OF REQUESTS PROCESSED	
	Number Received During Fiscal Year from Last Years Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Years Annual Report	Number Processed During Fiscal Year from Current Annual Report
01	275	250	262	253
02	1890	1758	1884	1578
03	1252	1436	1280	1446
04	790	854	776	828
05	1569	1600	1599	1605
06	518	583	621	586
07	521	530	522	528
08	341	370	341	366
09	587	526	595	516
10	459	449	458	446
HQ	2115	2053	2066	1919
AGENCY OVERALL	10317	10409	10404	10071

	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
01	5	0
02	19	35
03	0	0
04	0	0
05	2	0
06	21	11
07	0	0
08	0	0
09	0	0
10	3	3
HQ	282	285
AGENCY OVERALL	332	329

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report Appeals Received, Processed, and Backlogged				
	NUMBER OF APPEALS RECEIVED		NUMBER OF APPEALS PROCESSED	
	Number Received During Fiscal Year from Last Years Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Years Annual Report	Number Processed During Fiscal Year from Current Annual Report
HQ	167	204	217	215
AGENCY OVERALL	167	204	217	215

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
HQ	79	77
AGENCY OVERALL	79	77

F. Discussion of Other FOIA Activities (Optional)

In FY2010, EPAs' FOIA program:

- reduced EPA's backlog of overdue FOIA request to 329;
- improved the Agency's effectiveness and consistency by consolidating and standardizing procedures to respond to fee waivers and expedited processing requests;
- increased transparency and access to information by proactively posting information that is frequently sought through FOIA requests and by launching an on-line Web site informing FOIA requesters of the status of their requests.

Even before the President's 2009 memoranda on access and disclosure, EPA's National FOIA Program embarked on an effort to improve timeliness, accountability and transparency in the processing of FOIA requests submitted to the Agency. In the early part of 2000, the Agency had over 23,000 overdue FOIA requests and two of the oldest overdue requests in the federal government. EPA revised procedures and processes, deployed updated information technology tools, and collaboratively worked with subject matter experts across the Agency to successfully reduce the number of pending FOIA requests from 23,000 to 783 by the end of FY2008. EPA was able to further reduce its overdue FOIA request to 329 by the end of FY2010.

In embracing the President's mandate for greater transparency, the National FOIA Program worked with EPA Headquarters and Regional Offices to make data bases containing information that is frequently requested under FOIA available to the public through EPA's Web sites. For example, an individual who seeks to export an automobile is required to produce a certificate issued by EPA. In the past, the individual had to submit a FOIA request for the certification and wait for the Agency to respond to the request. Promoting transparency, quicker access and accountability, staff worked with program office responsible for these certificates to make the database available online. The public can now go directly to EPA's FOIA Web site ([epa.gov/foia](http://www.epa.gov/foia)) and print the certificate(s) in seconds as opposed to waiting days, or weeks to obtain the necessary documentation. Another example of greater transparency and promoting accountability is the "Status of My FOIA Request" (http://www.epa.gov/foia/foia_request_status.html). This tool allows requesters to easily obtain the status of their FOIA requests on-line. EPA also launched a FOIA dashboard, a listing of all FOIA cases where fee waivers were granted and developed. In response to the many FOIA requests for information on environmental conditions of a property or lot, EPA developed the on-line tool, MyProperty (www.epa.gov/myproperty). MyProperty searches multiple EPA and state databases for records of environmental interest. This tool allows the public, real estate agents, mortgage banks, engineering and environmental consulting firms and others with a need to know if EPA environmental databases have records on a specific property without filing a FOIA request. The search results are identical to the information provided when a FOIA request is filed with EPA for these records.

EPA continues its commitment to seek additional data and tools to enhance transparency and meet the needs of the requester community while looking for innovation.



Response to Questions 4 and 5

Case Caption	Payment Amount
<i>Miccosukee Tribe of Indians v. EPA</i> , No. 05-21023-CIV-MOORE (S.D. Fla.)	\$20,000
<i>Natural Resources Defense Council, Inc. v. EPA et. al</i> , 06-CIV-2676 (JSR) (S.D.N.Y.)	\$25,000
<i>Natural Resources Defense Council, Inc. v. EPA</i> , No. 08-CVI-2443 (DLC) (S.D.N.Y.)	\$12,000
<i>Natural Resources Defense Council, Inc. v. EPA</i> , No. 08-cv-6234.(VM) (S.D.N.Y.)	\$3,000
<i>Public Employees for Environmental Responsibility v. EPA</i> , Civ. Action No. 09-723 (GK) (D.D.C.)	\$1,000
<i>Public Employees for Environmental Responsibility v. EPA</i> , Civ. Action, No. 09-939 (RWR) (D.D.C.)	\$2,200
<i>Northwest Environmental Advocates v. Locke</i> , Civ. No. CV 09-0017 (PK) (D. Ore.)	\$8,500
<i>Sierra Club and Environmental Integrity Project v. EPA</i> , No. C 09-5662 (MEJ) (N.D. Cal.)	\$21,750
<i>Public Employees for Environmental Responsibility v. EPA</i> , Civ. Action 05-0655 (RCL) (D.D.C.) (Court issued minute order)	\$2,500
<i>Natural Resources Defense Council, Inc. v. DOD</i> , No. CV-04-2062 (RZx) (C.D. Cal.)*	EPA share was \$24,926.19 (total paid \$106,625)
<i>Reilly v. EPA</i> , No. 05-10450-RBC (D. Mass.) (electronic order)*	\$25,000
<i>Our Children's Earth v. EPA</i> , No. 08-00426 (SOM KSC) (D. Haw.)*	\$18,914.50
<i>Glynn Environmental v. EPA</i> , No. 2:09-002 (S.D. Ga.)*	\$62,668

Case Caption	Payment Amount
<i>Judicial Watch v. Department of Energy</i> , No. 10-0246 (HHK) (D.D.C.) (no dismissal order was entered)*	EPA share was \$175 (total paid \$350)

* In cases marked with an asterisk, the court did not issue an order entering the settlement agreement.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Case No. 05-21023-CIV-MOORE

MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA, a federally recognized
Indian Tribe,

Plaintiff,

vs.

UNITED STATES OF AMERICA, THE
ENVIRONMENTAL PROTECTION AGENCY,
STEPHEN L. JOHNSON, Acting Administrator of
the EPA, JIMMY PALMER, Regional Administrator
of the EPA, Region IV,

Defendants.

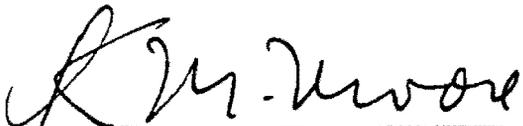
ORDER OF DISMISSAL

THIS CAUSE came before the Court upon the Parties' Stipulation of Compromise Settlement and Dismissal (dkt # 86).

UPON CONSIDERATION of the Stipulation and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the Court's Order (dkt # 74) of February 26, 2007, awarding costs in Defendants' favor in the amount of \$1,293.30 is hereby VACATED. Defendant Environmental Protection Agency shall pay to Plaintiff, Miccosukee Tribe of Indians of Florida, the amount of \$20,000.00 in attorneys' fees, with each party to bear its own costs. This cause is hereby DISMISSED WITH PREJUDICE. All pending motions are DENIED AS MOOT. This case remains CLOSED.

DONE AND ORDERED in Chambers at Miami, Florida, this 4th day of December, 2008.


K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

cc: All counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-21023-CIV-MOORE

MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA, a federally-recognized
Indian Tribe,

Plaintiff,

vs.

UNITED STATES OF AMERICA,
THE ENVIRONMENTAL PROTECTION
AGENCY, STEPHEN L. JOHNSON,
Acting Administrator of the EPA,
JIMMY PALMER, Regional Administrator
of the EPA, Region IV,

Defendants.

STIPULATION OF COMPROMISE SETTLEMENT AND DISMISSAL

Plaintiff, Miccosukee Tribe of Indians of Florida, and defendants, United States of America, the Environmental Protection Agency ("EPA"), Stephen L. Johnson, Administrator of the EPA, and Jimmy Palmer, Regional Administrator of the EPA, Region IV, by and through their respective counsel and pursuant to Fed. R. Civ. P. 41(a), hereby stipulate and agree as follows:

1. Defendant EPA shall pay to plaintiff, Miccosukee Tribe of Indians of Florida, the amount of twenty thousand dollars (\$ 20,000.00) in attorneys' fees, with each party to bear its own costs. Payment shall be made by check payable to Lehtinen-Riedi Brooks Moncarz, P.A. Trust Account. Defendants agree to relinquish any right to collect any costs previously awarded in this

action and not to seek any further award of fees or costs in this action. Consistent with this agreement, the parties request that the Court vacate its February 26, 2007, order awarding costs in defendants' favor in the amount of \$1,293.30.

2. Plaintiff agrees to accept the sum of \$20,000.00 in full and complete settlement and satisfaction of any and all claims, demands, rights, and causes of action plaintiff or its counsel have or may have against defendants in the above-captioned action, including any and all claims for attorneys' fees and costs.

3. This agreement is entered into by the parties for the purpose of compromising disputed claims and avoiding the expenses and risks of further litigation regarding these claims and shall not constitute, and should not be construed as, an admission on the part of the defendants or their successors, or of the United States of America, its agencies, officers, agents, or employees.

4. The parties further stipulate and agree that this action shall be dismissed with prejudice.

Respectfully submitted,

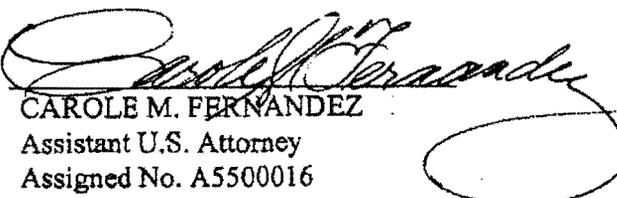
December 3, 2008

LEHTINEN RIEDI BROOKS MONCARZ, P.A.
Dexter W. Lehtinen, Fla. Bar No. 265551
Felippe Moncarz, Fla. Bar No. 182109
7700 North Kendall Dr., Suite 303
Miami, Florida 33156
Tel: (305) 279-1166
Fax: (305) 279-1365
fmoncarz@lehtinenlaw.com

By: 
DEXTER LEHTINEN, Esq.
Counsel for Plaintiff, Miccosukee Tribe

December 3rd, 2008

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: 
CAROLE M. FERNANDEZ
Assistant U.S. Attorney
Assigned No. A5500016
99 N.E. 4th St., Suite 300
Miami, Florida 33132
Tel: (305) 961-9333
Fax: (305) 530-7139
Carole.Fernandez@usdoj.gov
Counsel for Federal Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ECF CASE

----- x
NATURAL RESOURCES DEFENSE :
COUNCIL, INC., :

Plaintiff, :

06 Civ. 2676 (JSR)

- against - :

STIPULATION AND ORDER
REGARDING ATTORNEYS'
FEES AND COSTS

UNITED STATES ENVIRONMENTAL :
PROTECTION AGENCY; and the :
UNITED STATES DEPARTMENT OF :
JUSTICE, :

Defendants. :
----- x

The parties to the above-captioned action, by their undersigned representatives,
hereby agree as follows:

1. The United States will pay to plaintiff the sum of \$25,000, in attorneys' fees and litigation costs, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a)(4)(E). Plaintiff and defendants agree that this sum constitutes a full and complete settlement of any claims by plaintiff for attorneys' fees and litigation costs under any provision of law that plaintiff asserted or could have asserted in connection with this action, except that, consistent with paragraph 4 of the Stipulation and Order, dated September 27, 2006, previously entered by the Court (the "September 27, 2006 Stipulation and Order"), if this action is reinstated pursuant to paragraph 3 of the September 27, 2006 Stipulation and Order, nothing herein shall be deemed to waive or bar any claims plaintiff may have for recovery of fees or costs under FOIA arising from the motion to reinstate the action and

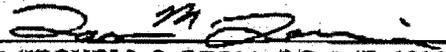
USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1-16-07

any litigation of the action subsequent to reinstatement, and defendants reserve any and all arguments in opposition and defenses to any such claims.

2. Nothing in this Stipulation and Order shall constitute an admission that defendant, or their agents, servants or employees, are liable for any attorneys' fees or litigation costs, or that plaintiff "substantially prevailed" in this action under 5 U.S.C. § 552(a)(4)(e), or is entitled to any attorneys' fees or litigation costs. This Stipulation and Order is entered into by both parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks of litigation concerning attorneys' fees and litigation costs.

DATED: New York, New York
January 5, 2007

NATURAL RESOURCES DEFENSE
COUNCIL, INC.

By: 
MITCHELL S. BERNARD (MB-5823)
x LAWRENCE M. LEVINE (LL-2994)
AMELIA E. TOLEDO (AT-7075)
Telephone: (212) 727-2700
Facsimile: (212) 727-1773

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
Attorney for Defendants

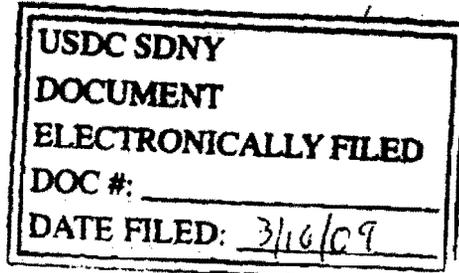
By: 

ROSS E. MORRISON (RM-7271)
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2691
Facsimile: (212) 637-2686

SO ORDERED:


United States District Judge

1-12-07



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

Plaintiff,

- v. -

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant.

No. 08 Civ. 2443 (DLC)

**STIPULATION AND ORDER
OF SETTLEMENT AND
DISMISSAL**

WHEREAS, Plaintiff Natural Resources Defense Council, Inc. ("NRDC") filed this suit in the United States District Court for the Southern District of New York (the "Court") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking the release of certain information by Defendant United States Environmental Protection Agency ("EPA"), and seeking a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) in connection with its request;

WHEREAS, on June 3, 2008, NRDC moved for summary judgment on its entitlement to the fee waiver;

WHEREAS, on August 19, 2008, the Court granted NRDC's motion for summary judgment in part and denied it in part;

WHEREAS, EPA has produced to NRDC certain of the documents it requested in connection with its FOIA request; and

WHEREAS, NRDC has informed EPA that it no longer wishes to pursue the FOIA request further.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties, as follows:

1. NRDC hereby dismisses with prejudice any and all claims NRDC now has or may hereafter acquire against EPA or the United States of America ("United States"), or any department, agency, officer, or employee of EPA and/or the United States, related to or arising out of NRDC's FOIA request or fee waiver at issue in this action.

2. EPA shall pay to the NRDC the sum of \$12,000.00 in attorneys' fees and litigation costs, pursuant to 5 U.S.C. § 552(a)(4)(E), which sum NRDC agrees to accept as full payment of any attorneys' fees and costs NRDC has incurred or will incur in this action for services performed up to the date of this Stipulation and Order. Upon payment, NRDC releases the United States, including EPA, from any claims regarding such fees and costs. If EPA has not completed payment within 60 days, it will inform the Court as to the reason for the delay.

3. The parties understand and agree that this Stipulation and Order contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

4. The Court shall retain jurisdiction over any issues that may arise relating to this Stipulation and Order.

Dated: March , 2009

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: _____

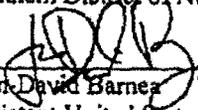
Sarah Lipton Lubet
Sarah Lipton Lubet
1200 New York Ave., NW, Suite 400
Washington, DC 20005
Tel: (202) 289-2405
Fax: (202) 289-1060
Email: slipton-lubet@nrdc.org

*The Clerk of Court shall close the case
So ordered.*

Janice L. L...
March 16, 2009

LEV L. DASSIN
Acting United States Attorney for the
Southern District of New York

By:


Jean-David Barnea
Assistant United States Attorney
86 Chambers Street, 3rd floor
New York, New York 10007
Tel: (212) 637-2679
Fax: (212) 637-2717
Email: Jean-David.Barnea@usdoj.gov

SO ORDERED:

HON. DENISE L. COTE
United States District Judge

MARCELO, T

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

Plaintiff,

- v. -

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant.
-----X

No. 08-cv-6234 (VM)

**STIPULATION AND ORDER
OF SETTLEMENT AND
DISMISSAL**

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff Natural Resources Defense Council, Inc. ("NRDC") and Defendant United States Environmental Protection Agency ("EPA") (collectively "the parties"), as follows:

1. NRDC having received documents responsive to the Freedom of Information Act ("FOIA") request that is the subject of this litigation, and having received EPA's agreement to pay NRDC the sum of \$3,000.00 for its attorneys' fees and litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E), this action is hereby dismissed with prejudice, except that the Court shall retain jurisdiction to enforce EPA's obligation to make the agreed-upon payment. The parties will inform the Court within 60 days of such payment.

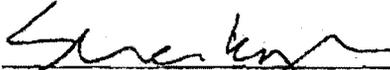
2. The parties understand and agree that this Stipulation and Order contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

//
//

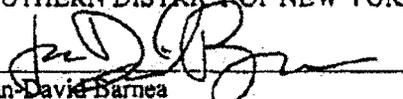
USDS SDNY
DOCUMENT
ELECTRONICALLY
DOC #:
DATE FILED: 10-9-08

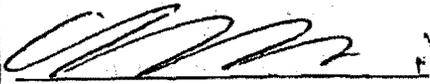
Dated: October 8, 2008

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: 
Selena K. Kyle (admitted *pra hac vice*)
111 Sutter Street, 20th Floor
San Francisco, CA 94110-1131
Tel: (415) 875-6100
Fax: (415) 875-6161
Email: skyle@nrdc.org

MICHAEL J. GARCIA
UNITED STATES ATTORNEY FOR THE
SOUTHERN DISTRICT OF NEW YORK

By: 
Jean-David Barnea
Assistant United States Attorney
86 Chambers Street, 3rd floor
New York, New York 10007
Tel: (212) 637-2679
Fax: (212) 637-2717
Email: Jean-David.Barnea@usdoj.gov

SO ORDERED: 9 October 2008

Hon. Victor Marrero
United States District Judge

CERTIFICATE OF SERVICE

I, Selena K. Kyle, hereby certify that on October 8, 2008, I caused the foregoing document:

STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

to be served, by electronic mail and first-class mail, on the following counsel:

Jean-David Barnea
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, NY 10007
Jean-David.Barnea@usdoj.gov
Attorney for Defendant United States Environmental Protection Agency

I declare under penalty of perjury that the foregoing is true and correct.

October 8, 2008:

/s/ Selena K. Kyle
Selena K. Kyle

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR)
ENVIRONMENTAL RESPONSIBILITY,)
)
Plaintiff,)
)
v.)
)
U. S. ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Defendant.)
)

Civil Action No. 09-723 (GK)

STIPULATION OF SETTLEMENT AND DISMISSAL

Plaintiff, Public Employees for Environmental Responsibility ("PEER"), and Defendant, U.S. Environmental Protection Agency ("EPA"), hereby settle and compromise the above entitled lawsuit brought under the Freedom of Information Act ("FOIA") on the following terms:

1. Plaintiff agrees to dismiss this suit with prejudice.
2. Defendant shall pay \$1,000.00 (one thousand dollars) in attorneys' fees and costs to Plaintiff. Payment of this money will be made by electronic funds transfer within thirty days after receiving notification of the Court's entry of this Stipulation and after counsel for Plaintiff provides the necessary information to counsel for Defendant to effectuate the transfer.
3. This Stipulation of Settlement constitutes the full and complete satisfaction of any and all claims arising from (a) the allegations set forth in the complaint filed in this lawsuit and (b) any litigation or administrative proceeding that Plaintiff has brought, could bring, or could have brought regarding Plaintiff's FOIA request in this case.
4. This Stipulation of Settlement does not constitute an admission of liability or fault on the part of Defendant, the United States, its agents, servants, or employees, and is entered into by

both parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

5. This Stipulation of Settlement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

6. The Court retains jurisdiction over enforcement of any other provisions of this Stipulation of Settlement.

7. Execution and filing of this Stipulation of Settlement by counsel for Plaintiffs and by counsel for Defendant constitutes a dismissal of this lawsuit, with prejudice, effective upon entry by the Court, pursuant to Rule 41(a)(1)(ii). Any and all remaining issues are waived.

Respectfully submitted,

/s/

PAULA DINERSTEIN, D.C. Bar # 333971
Public Employees for Environmental Responsibility
2001 S Street, NW, Suite 570
Washington, D.C. 20009
(202) 265-7337

CHANNING PHILLIPS, D.C. Bar # 415793
Acting United States Attorney

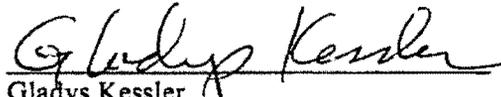
RUDOLPH CONTRERAS, D.C. Bar # 434122
Assistant United States Attorney

/s/

HARRY B. ROBACK, D.C. Bar # 485145
Assistant United States Attorney
United States Attorneys Office
555 4th Street, N.W.
Washington, D.C. 20530
Tel: 202-616-5309
harry.roback@usdoj.gov

June 1, 2009

It is SO ORDERED this 2nd day of June, 2009.


Gladys Kessler
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR)
ENVIRONMENTAL RESPONSIBILITY,)
)
Plaintiff,)
)
v.)
)
U. S. ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Defendant.)

Civil Action No. 09-939 (RWR)

FILED
AUG 24 2009

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

STIPULATION OF SETTLEMENT AND DISMISSAL

Plaintiff, Public Employees for Environmental Responsibility ("PEER"), and Defendant, U.S. Environmental Protection Agency ("EPA"), by and through the United States Attorney for the District of Columbia, hereby agree and stipulate that the above-captioned civil action shall be settled and dismissed on the following terms:

1. **Settlement Payment.** Defendant shall pay plaintiff the total sum of \$2,200 (two thousand and two hundred dollars). This payment shall be made by an electronic transfer of funds as specified in instructions provided to defendant's counsel by plaintiff's counsel in writing. Payment shall be made as promptly as practicable, consistent with the normal processing procedures followed by the Department of Justice and the Department of the Treasury, following the dismissal of the above-captioned civil action. Plaintiff and plaintiff's counsel shall co-operate with defendant to insure that all documentation required to process this payment is complete and accurate. This payment is inclusive of plaintiff's attorney's fees, costs, and other litigation expenses, and defendant shall have

no further liability for those fees, costs, and expenses. Plaintiff and plaintiff's counsel shall be responsible for the distribution of the payment among themselves.

2. Dismissal with Prejudice. Defendant's counsel may file the fully executed Stipulation with the Court at any time after the date on which the Stipulation was signed by both plaintiff and defendant, and such filing shall constitute a dismissal of the above-captioned civil action with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), except that the Court shall retain jurisdiction to enforce the terms of this Stipulation. Promptly after the dismissal of the above-captioned civil action, plaintiff shall dismiss any pending administrative complaints regarding Plaintiff's FOIA request in this case, with prejudice.

3. Release. This Stipulation provides for the full and complete satisfaction of all claims which have been or could have been asserted by plaintiff in the above-captioned civil action and any pending administrative complaints regarding Plaintiff's FOIA request in this case.

4. No Assignment. Plaintiff represents and warrants that it is the sole lawful owner of all the rights and claims which it has settled and released herein, and that it has not transferred or assigned any of those rights and claims or any interest therein. Plaintiff shall indemnify, hold harmless, and defend the defendant, the Agency, and the United States, its agencies and officials, and its present and former employees and agents, in their official and individual capacities, from and against any transferred, assigned, or subrogated interests in those rights and claims.

5. No Admission of Liability. This Stipulation has been entered into by

plaintiff and defendant solely for the purposes of compromising disputed claims without protracted legal proceedings and avoiding the expense and risk of such litigation.

Therefore, this Stipulation is not intended and shall not be deemed an admission by either party of the merit or lack of merit of the opposing party's claims and defenses. Without limiting the generality of the foregoing, this Stipulation does not constitute, and shall not be construed as, an admission that defendant, the Agency, or any of the Agency's present or former employees or agents violated any of plaintiff's rights or any laws or regulations, or as an admission of any contested fact alleged by plaintiff in connection with this case or otherwise. This Stipulation may not be used as evidence or otherwise in any civil or administrative action or proceeding against defendant, the Agency, or the United States or any of its agencies or officials or present or former employees or agents, either in their official or individual capacities, except for proceedings necessary to implement or enforce the terms hereof.

6. Tax Consequences. Plaintiff acknowledges that it has not relied on any representations by defendant or defendant's employees or agents as to the tax consequences of this Stipulation or any payments made by or on behalf of defendant hereunder. Plaintiff shall be solely responsible for compliance with all federal, state, and local tax filing requirements and other obligations arising from this Stipulation that are applicable to plaintiff.

7. Entire Agreement. This Stipulation contains the entire agreement between the parties hereto and supersedes all previous agreements, whether written or oral,

between the parties relating to the subject matter hereof. No promise or inducement has been made except as set forth herein, and no representation or understanding, whether written or oral, that is not expressly set forth herein shall be enforced or otherwise be given any force or effect in connection herewith.

8. Amendments. The terms of this Stipulation may not be modified or amended, and no provision hereof shall be deemed waived, except by a written instrument signed by the party to be charged with the modification, amendment, or waiver.

9. Construction. The parties acknowledge that the preparation of this Stipulation was collaborative in nature, and so agree that any presumption or rule that an agreement is construed against its drafter shall not apply to the interpretation of this Stipulation or any term or provision hereof.

10. Headings. The paragraph headings in this Stipulation have been inserted for convenience of reference only, and shall not limit the scope or otherwise affect the interpretation of any term or provision hereof.

11. Severability. The provisions of this Stipulation are severable, and any invalidity or unenforceability of any one or more of its provisions shall not cause the entire agreement to fail or affect the validity or enforceability of the other provisions herein, which shall be enforced without the severed provision(s) in accordance with the remaining provisions of this Stipulation

12. Further Assurances. Each party agrees to take such actions and to execute such additional documents as may be necessary or appropriate to fully effectuate and

implement the terms of this Stipulation.

13. Right to Cure. If either plaintiff or defendant at any time believes that the other party is in breach of this Stipulation, that party shall notify the other party of the alleged breach. The other party shall then have thirty (30) days to cure the breach or otherwise respond to the claim. The parties shall make a good faith effort to resolve any dispute arising from or regarding this Stipulation before bringing the dispute to the Court's attention.

14. Notices. Any notice required or permitted to be given pursuant to this Stipulation shall be in writing and shall be delivered by hand, or transmitted by fax or by e-mail, addressed as follows or as each party may subsequently specify by written notice to the other:

If to plaintiff:	Paula Dinerstein Public Employees for Environmental Responsibility 2001 S Street, NW, Suite 570 Washington, D.C. 20009 (202) 265 4192 (fax) pdinerstein@peer.org
If to defendant:	Scott Albright U.S. EPA Office of General Counsel Information Law Practice Group Albright.Scott@epamail.epa.gov
with copy to:	Andrea McBarnette Assistant United States Attorney 555 Fourth Street, N.W. Washington, D.C. 20530 (202) 514-8780 (fax) Andrea.McBarnette@usdoj.gov

15. Execution. This Stipulation may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. A facsimile or other duplicate of a signature shall have the same effect as a manually-executed original.

16. Governing Law. This Stipulation shall be governed by the laws of the District of Columbia, without regard to the choice of law rules utilized in that jurisdiction, and by the laws of the United States.

17. Binding Effect. Upon execution of this Stipulation by all parties hereto, this Stipulation shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, administrators, successors, and assigns. Each signatory to this Stipulation represents and warrants that he or she is fully authorized to enter into this Stipulation.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Stipulation on the dates shown below.

Paula Dinerstein
PAULA DINERSTEIN
D.C. Bar # 333971
Public Employees for Environmental
Responsibility
2001 S Street, NW, Suite 570
Washington, D.C. 20009
(202) 265-7337

Plaintiff's Counsel

Date: August 5, 2009

C. D. Phillips (by PC)
CHANNING D. PHILLIPS
D.C. BAR #415793
Acting United States Attorney

Rudolph Contreras
RUDOLPH CONTRERAS
D.C. Bar # 434122
Assistant United States Attorney

Andrea McBarnette
ANDREA McBARNETTE
D.C. Bar #483789
Assistant United States Attorney
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 514-7153

Date: 8/5/09

It is SO ORDERED this 24th day of August, 2009.

Richard W. Roberts
Richard W. Roberts
United States District Judge

STEPHANIE M. PARENT, OSB #92590
parentlaw@gmail.com
4685 S.W. Flower Place
Portland, Oregon 97221
(503) 320-3235

PAUL KAMPMEIER, WSBA #31560
pkampmeier@wflc.org
Washington Forest Law Center
615 Second Avenue, Suite 360
Seattle, Washington 98104-2245
(206) 223-4088 x 4
(206) 223-4280 [fax]

Attorneys for Plaintiff

FILED
SEP 18 2009

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

NORTHWEST ENVIRONMENTAL ADVOCATES,

Civ. No. CV09-0017-PK

Plaintiff,

v.

GARY LOCKE, et al.,

**STIPULATED MOTION AND
AGREED ORDER
DISMISSING FOIA CLAIMS
WITH PREJUDICE**

Defendants.

STIPULATED MOTION

The parties in the above-captioned action hereby move the Court for entry of the parties' agreed order dismissing with prejudice the fourth and fifth claims for relief in Plaintiff's complaint. Plaintiff Northwest Environmental Advocates filed the complaint in this action on January 6, 2009. *See* Dkt. #1. Plaintiff's fourth and fifth claims for relief alleged violations of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, by the U.S. Environmental Protection Agency ("EPA" or "Agency"). *See* Complaint, ¶¶ 58-72.

In the parties' April 3, 2009, Stipulation and Joint Motion for Temporary Stay of Litigation, Defendant Lisa P. Jackson, Administrator of the EPA, stipulated through counsel that by May 22, 2009, the EPA would produce all non-exempt documents responsive to the FOIA request at issue in the complaint, as well as a list of any responsive documents withheld by the EPA. *See* Dkt. # 16. On May 22, 2009, the EPA mailed six boxes of documents to Plaintiff's counsel in Seattle, Washington. On June 3, 2009, the EPA mailed another package of documents to Plaintiff's counsel, along with a letter that noted that one part of one email had been redacted under FOIA Exemption 5. EPA's June 3 letter also stated: "The enclosed subset of documents represents the completion of EPA's production response to this FOIA request."

Given EPA's stipulation and subsequent production of responsive documents, Defendant Jackson hereby agrees to pay eight thousand five hundred dollars and no cents (\$8,500.00) in attorneys' fees to Plaintiff, and Plaintiff hereby agrees to dismiss its fourth and fifth claims for relief with prejudice. Plaintiff and Defendant Jackson further agree that the Court should retain jurisdiction to enforce the terms of this agreement should that become necessary.

Accordingly, the parties now respectfully move the Court to sign and file the parties' agreed order dismissing with prejudice the fourth and fifth claims for relief in Plaintiff's January 6, 2009, complaint.

Respectfully submitted this 18th day of September, 2009.

s/ Paul Kampmeier

PAUL KAMPMEIER (WSBA #31560)
Washington Forest Law Center
615 Second Avenue, Suite 360
Seattle, Washington 98104-2245
(206) 223-4088 x 4
(206) 223-4280 [fax]
pkampmeier@wflc.org

STEPHANIE M. PARENT (OSB #92590)
4685 S.W. Flower Place
Portland, Oregon 97221
(503) 320-3235
parentlaw@gmail.com

Attorneys for Plaintiff

s/ Kevin Danielson

KEVIN DANIELSON, OSB #06586
Assistant United States Attorney
kevin.c.danielson@usdoj.gov
1000 SW Third Avenue, Suite 600
Portland, OR 97204-2902
Telephone: (503) 727-1025
FAX : (503) 727-1117

KRISTOFOR R. SWANSON
(Colo. Bar No. 39378)
U.S. Department of Justice
Natural Resources Section
P.O. Box 663
Washington, DC 20044-0663
Tel: 202-305-0248
Fax: 202-353-2021
Email: kristofor.swanson@usdoj.gov

Attorneys for Defendants

AGREED ORDER

Having considered the parties' April 3, 2009, stipulations and Plaintiff's and Defendant Jackson's stipulated motion for dismissal with prejudice of the fourth and fifth claims in the complaint filed in this action on January 6, 2009, IT IS HEREBY ORDERED:

1. Within forty-five (45) days of the filing of this Order with the clerk of court, Defendant Jackson shall pay eight thousand five hundred dollars and no cents (\$8,500.00) to the Washington Forest Law Center for attorneys' fees arising out of the Freedom of Information Act claims in Plaintiff's January 6, 2009, complaint. Defendant Jackson will make the \$8,500.00 payment required by this Order through an electronic payment and will work with Plaintiff to accomplish this within the aforementioned time period.

2. The fourth and fifth claims for relief in Plaintiff's January 6, 2009, complaint are dismissed with prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

3. The Court retains jurisdiction to enforce and oversee compliance with the terms of this Order. See Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994).

SO ORDERED:

Dated: 9/18/09


HONORABLE PAUL J. PAPAK
United States Magistrate Judge

Presented by:

s/ Paul Kampmeier
PAUL KAMPMEIER (WSBA #31560)
Washington Forest Law Center
615 Second Avenue, Suite 360
Seattle, Washington 98104-2245
(206) 223-4088 x 4
pkampmeier@wflc.org

Attorney for Plaintiff

STIPULATED MOTION AND AGREED
ORDER DISMISSING FOIA CLAIMS - 4

s/ Kevin Danielson

KEVIN DANIELSON, OSB #06586
Assistant United States Attorney
kevin.c.danielson@usdoj.gov
1000 SW Third Avenue, Suite 600
Portland, OR 97204-2902
Telephone: (503) 727-1025

Attorney for Defendant Jackson

1 MELINDA HAAG (CSBN 132612)
United States Attorney
2 JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
3 MELANIE L. PROCTOR (CSBN 228971)
Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055
5 San Francisco, California 94102-3495
Telephone: (415) 436-6730
6 FAX: (415) 436-7169
melanie.proctor@usdoj.gov

7 Attorneys for Defendant

8 DAVE BAHR

9 Bahr Law Offices, P.C.
10 1035 1/2 Monroe Street
Eugene, Oregon 97402
11 Telephone: (541) 556-6439

12 Attorney for Plaintiffs

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 THE SIERRA CLUB and
ENVIRONMENTAL INTEGRITY
17 PROJECT,
18 Plaintiffs,
19 v.
20 ENVIRONMENTAL PROTECTION
AGENCY,
21 Defendant.
22

No. C 09-5662 MEJ
STIPULATION AND SETTLEMENT, and
~~PROPOSED~~ ORDER

23 Plaintiffs Sierra Club and Environmental Integrity Project ("Plaintiffs") and Defendant
24 United States Environmental Protection Agency ("Defendant"), by and through their undersigned
25 counsel, hereby enter into this Stipulation and [Proposed] Order Re Settlement and Dismissal
26 ("Stipulation") as follows:

27 1. Defendant shall pay to Plaintiffs the amount of twenty one thousand seven hundred
28 and fifty U.S. dollars (\$21,750.00) in full and complete satisfaction of Plaintiffs' claims for

1 attorneys' fees, costs, and litigation expenses under the Freedom of Information Act ("FOIA") in the
2 above-captioned matter. This payment shall constitute full and final satisfaction of any and all of
3 Plaintiffs' claims for attorneys' fees, costs, and litigation expenses in the above-captioned matter,
4 and is inclusive of any interest. Payment of this money will be made by electronic funds transfer,
5 and counsel for Plaintiffs will provide the necessary information to counsel for Defendant to
6 effectuate the transfer. Payment shall be made within thirty (30) days of the date this Stipulation is
7 signed by all counsel and Plaintiffs' counsel has provided the necessary information for the
8 electronic funds transfer.

9 2. Upon the execution of this Stipulation, Plaintiff hereby releases and forever
10 discharges Defendant, and its successors, the United States of America, and any department, agency,
11 or establishment of the United States, and any officers, employees, agents, successors, or assigns of
12 such department, agency, or establishment, from any and all claims and causes of action that Plaintiff
13 asserts or could have asserted in this litigation, or which hereinafter could be asserted by reason of,
14 or with respect to, or in connection with, or which arise out of, the FOIA request on which this action
15 is based or any other matter alleged in the Complaint, including but not limited to all past, present,
16 or future claims for attorneys' fees, costs, or litigation expenses in connection with the above-
17 captioned litigation.

18 3. The provisions of California Civil Code Section 1542 are set forth below:

19 "A general release does not extend to claims which the creditor does not know or
20 suspect to exist in his favor at the time of executing the release, which if known by
 him must have materially affected his settlement with the debtor."

21 Plaintiffs, having been apprised of the statutory language of Civil Code Section 1542 by its attorneys,
22 and fully understanding the same, nevertheless elects to waive the benefits of any and all rights it
23 may have pursuant to the provision of that statute and any similar provision of federal law. Plaintiffs
24 understands that, if the facts concerning injuries or liability for damages pertaining thereto are found
25 hereinafter to be other than or different from the facts now believed by it to be true, the Agreement
26 shall be and remain effective notwithstanding such material difference.

27 4. Execution of this Stipulation and entry by this Court shall constitute dismissal of this
28 case with prejudice pursuant to Fed. R. Civ. P. 41(a).

1 5. The parties acknowledge that this Stipulation is entered into solely for the purpose
2 of settling and compromising any remaining claims in this action without further litigation, and it
3 shall not be construed as evidence or as an admission on the part of Defendant, the United States,
4 its agents, servants, or employees regarding any issue of law or fact, or regarding the truth or validity
5 of any allegation or claim raised in this action, or as evidence or as an admission by the Defendant
6 regarding Plaintiffs' entitlement to attorneys' fees and other litigation costs under the FOIA. This
7 Stipulation shall not be used in any manner to establish liability for fees, amounts, or hourly rates
8 in any other case or proceeding.

9 6. This Stipulation is binding upon and inures to the benefit of the parties hereto and
10 their respective successors and assigns.

11 7. If any provision of this Stipulation shall be held invalid, illegal, or unenforceable, the
12 validity, legality, and enforceability of the remaining provisions shall not in any way be affected or
13 impaired thereby.

14 8. This Stipulation shall constitute the entire agreement between the parties, and it is
15 expressly understood and agreed that this Stipulation has been freely and voluntarily entered into by
16 the parties hereto. The parties further acknowledge that no warranties or representations have been
17 made on any subject other than as set forth in this Stipulation.

18 9. The persons signing this Stipulation warrant and represent that they possess full
19 authority to bind the persons on whose behalf they are signing to the terms of the Stipulation.

20 10. This Stipulation may not be altered, modified or otherwise changed in any respect
21 except in writing, duly executed by all of the parties or their authorized representatives.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 11. This Stipulation may be executed in counterparts and is effective on the date by which
2 both parties' counsel have executed the Stipulation.

3 SO STIPULATED AND AGREED this 26th day of November, 2010.

4
5 Respectfully submitted,
6 DATED: November 26, 2010 BAHR LAW OFFICES, P.C.

7
8 /s/
9 DAVID A. BAHR
Attorney for Plaintiff

10 DATED: November 26, 2010 MELINDA HAAG
United States Attorney

11
12 /s/
13 MELANIE L. PROCTOR¹
Assistant United States Attorney

14
15 ~~PROPOSED~~ ORDER

16 Upon stipulation of the parties and good cause appearing, IT IS HEREBY ORDERED that
17 this action is dismissed with prejudice on the terms and conditions described in the above Stipulation
18 between the parties.

19
20 DATED: November 29, 2010
21 
22 MARIA-ELLEN JAMES
23 United States Magistrate Judge
24
25
26
27

28 ¹I, Melanie L. Proctor, hereby attest that I obtained the concurrence in the filing of this document from all signatories indicated by a "conformed" signature (/s/).

Note: There is no separate court order for the case captioned, *Public Employees for Environmental Responsibility v. EPA*, Civ. Action 05-0655 (RCL) (DDC). The Court issued a July 1, 2005 Minute Order, which can be found in the docket. The Minute Order adopted the parties' Stipulation of Settlement and Dismissal. We have attached a copy of the docket sheet that contains the July 1, 2005 Minute Order and the Stipulation of Settlement and Dismissal.

Single Search - with Terms and Connectors

Enter keywords - Search multiple dockets & documents

Search

[View Demo](#)
[Search Tips](#)

[My CourtLink](#) [Search](#) [Dockets & Documents](#) [Track](#) [Alert](#) [Strategic Profiles](#) [My Account](#)

[Search](#) > [Search by Criteria](#) > [US-DIS-DCD 05-655 2/14/2011](#) > [US-DIS-DCD:05-655:CV](#)

Docket Tools

[Get Updated Docket](#)

[Track Docket Activity](#)

[Search for Similar](#)

[Set Alert for Similar Dockets](#)

[Add to My Briefcase](#)

This docket was retrieved from the court on 6/2/2007

CourtLink can alert you when there is new activity in this case

Start a new search based on the characteristics of this case

CourtLink alerts you when there are new cases that match characteristics of this case

[Email this Docket](#)

[Printer Friendly Format](#)

[Additional resources for cases like this may be found in our LexisNexis Practice Area communities.](#)

Docket

[LexisWeb Search is enabled on this docket](#)

US District Court Civil Docket

U.S. District - District of Columbia
(Washington DC)

1:05cv655

Public Employees For Environmental Responsibility v. US Environmental Protection Agenc

This case was retrieved from the court on Saturday, June 02, 2007 [Update Now](#)

Date Filed: 03/31/2005

Class Code: CLOSED, TYPE-I

Assigned To: Judge Henry H Kennedy

Closed: Yes

Referred To:

Statute: 05:552

Nature of suit: FOIA (895)

Jury Demand: None

Cause: Freedom of Information Act Demand Amount: \$0

Lead Docket: None

NOS Description: Foia

Other Docket: None

Jurisdiction: U.S. Government Defendant

Litigants

Attorneys

Public Employees For Environmental Responsibility
Plaintiff

[Richard E Condit](#)
[COR LD NTC]
[Public Employees for Environmental Responsibility](#)
2000 P Street, NW
Suite 240
Washington , DC 20036
USA
(202) 265-7337 Ext 231
Fax: (202) 318-3211
Email: R1condit1@earthlink.net

US Environmental Protection Agency
Defendant

[Alan Burch](#)
[COR LD NTC]
[US Attorney's Office](#)
555 Fourth Street, NW
Washington , DC 20530
USA
(202) 514-7204
Fax: (202) 514-8780
Email: Alan.burch@usdoj.gov

Documents

[Retrieve Document\(s\)](#)

[Send to TimeMap](#)

<input checked="" type="checkbox"/>	Availability	No.	Date	Proceeding Text
<input checked="" type="checkbox"/>	Online	1	03/31/2005	COMPLAINT against U.S. ENVIRONMENTAL PROTECTION AGENCY (Filing fee \$ 250) filed by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY.(lc,) (Entered: 04/01/2005)
	Runner	--	03/31/2005	SUMMONS (3) Issued as to U.S. ENVIRONMENTAL PROTECTION AGENCY, U.S. Attorney and U.S. Attorney General (lc,) (Entered: 04/01/2005)
<input checked="" type="checkbox"/>	Online	2	04/06/2005	NOTICE of Appearance by Alan Burch on behalf of U.S. ENVIRONMENTAL PROTECTION AGENCY (Burch, Alan) (Entered: 04/06/2005)
<input checked="" type="checkbox"/>	Online	3	04/26/2005	Consent MOTION for Extension of Time to File Answer re 1 Complaint or Otherwise Respond to Complaint by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Attachments: # 1 Text of Proposed Order)(Burch, Alan) (Entered: 04/26/2005)
	Runner	--	04/28/2005	Minute order granting 3 defendant's consent motion to enlarge time to file answer or otherwise respond to complaint. Defendant has up to and including June 16, 2005, within which to answer, move, or otherwise respond to plaintiff's complaint. Signed by Judge Henry H. Kennedy, Jr., on April 28, 2005. Official paperless order (FL,) (Entered: 04/28/2005)
	Runner	--	04/28/2005	Set Deadlines: Answer due by 6/16/2005. (rew,) (Entered: 04/28/2005)
<input checked="" type="checkbox"/>	Online	4	06/13/2005	Second MOTION for Extension of Time to File Answer re 1 Complaint (with Plaintiff Consent) by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Attachments: # 1 Text of Proposed Order)(Burch, Alan) (Entered: 06/13/2005)
	Runner	--	06/16/2005	Minute order granting 4 defendant's second consent motion to enlarge time to file answer or otherwise respond to complaint. Defendant has up to and including June 30, 2005, within which to answer or otherwise respond to the complaint. Signed by Judge Henry H. Kennedy, Jr., on June 16, 2005. Official paperless order (FL,) (Entered: 06/16/2005)
	Runner	--	06/20/2005	Set/Reset Deadlines: Answer due by 6/30/2005. (rew,) (Entered: 06/20/2005)
<input checked="" type="checkbox"/>	Online	5	06/30/2005	NOTICE of Settlement by all parties (Attachments: # 1 Text of Proposed Order "Stipulation of Settlement and Dismissal")(Burch, Alan) (Entered: 06/30/2005)
	Runner	--	07/01/2005	MINUTE ORDER: The parties' Stipulation of Settlement and Dismissal of June 30, 2005 (#5) is SO ORDERED. (Kennedy, Henry) (Entered: 07/01/2005)

[Retrieve Document\(s\)](#) [Send to TimeMap](#)

Need a better solution for receiving and sending service in your cases? Get more control over managing service in all of your cases and reduce associated overhead with LexisNexis File & Serve E-Service. Getting started is easy. Call 1.800.869.1910 or [click here](#).



About LexisNexis Terms & Conditions Pricing Privacy Customer Support - 1-888-311-1966
 Copyright © 2011 LexisNexis®. All rights reserved.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY, Plaintiff,)	
)	
v.)	Civil Action No. 05-0655 (RCL)
)	
U.S. ENVIRONMENTAL PROTECTION AGENCY, Defendants.)	

STIPULATION OF SETTLEMENT AND DISMISSAL

The parties, by and through their respective counsel, hereby stipulate and agree, subject to the approval of the Court, as follows:

1. The parties do hereby agree to settle and compromise the above-entitled actions under the terms and conditions set forth herein.
2. Within three business days of receiving notification of the Court's approval of this Stipulation, Defendant shall produce to Plaintiff the following documents on a compact disc (in Microsoft Word, Microsoft Office applications, WordPerfect, or Adobe Portable Document Format (PDF)):
 - (a) "Climate Survey Results" that EPA generated that present the cumulative totals, for responses to all multiple-choice questions in the 1999, 2001, and 2003 Climate Surveys, in which data were broken down by:
 - (1) each Office of Research and Development ("ORD") Laboratory: National Exposure Research Laboratory ("NERL"), National Health and Environmental

Effects Research Laboratory ("NHEERL"), and National Risk Management Research Laboratory ("NRMRL");

(2) each ORD Center: National Center for Environmental Assessment ("NCEA"), National Center for Environmental Research ("NCER"), and National Homeland Security Research Center ("NHSRC"), and

(3) each ORD Office: Office of Science Policy ("OSP") and Office of Resources Management and Administration ("ORMA").

(b) "Climate Survey Results" that EPA generated presenting the cumulative totals, for responses to all multiple-choice questions in the 1999, 2001, and 2003 Climate Surveys, in which data were broken down by manager/non-manager, scientist/non-scientist, ethnicity, gender, and team leader/other, for the same laboratories, centers, and offices listed in (A).

(c) PowerPoint Presentations for ORD employees that EPA generated between January 1, 2001, and November 3, 2004, presenting the cumulative totals, for responses to all multiple-choice questions in the 2001 and 2003 Climate Surveys, for the same offices laboratories, centers, and offices listed in (A).

(d) "Comparative Results from Prior Years" that EPA generated between January 1, 2001 and November 3, 2003 presenting the trends, for responses to all multiple-choice questions in the Climate Surveys for the aforementioned ORD laboratories, centers, and offices.

3. Defendant shall pay Plaintiff a lump sum of Two Thousand Five Hundred Dollars (\$2,500.00) in attorneys' fees and costs in this matter.

4. Payment of the attorneys' fees and costs award will be made by electronic funds transfer, and counsel for Plaintiff will provide the necessary information to counsel for Defendant to effectuate the transfer. Counsel for defendants agree that, upon notification of the Court's approval of this Stipulation and receipt of information, they will promptly complete and transmit to the Treasury of the United States the documentation necessary to effectuate this payment.

5. Plaintiff agrees to forever discharge, release, and withdraw any claims of access to records or portions of records sought in this Freedom of Information Act suit.

6. This Stipulation of Settlement shall represent full and complete satisfaction of all claims arising from the allegations set forth in the complaint filed in these actions, including full and complete satisfaction of all claims for costs and attorneys fees that have been, or could be, made in this case. In particular, this Stipulation of Settlement shall include all claims for attorneys' fees and costs incurred in connection with the administrative Freedom of Information Act process, the District Court litigation process, and any other proceedings involving the claims raised in these actions.

7. This Stipulation of Settlement shall not constitute an admission of liability or fault on the part of the United States, its agents, servants, or employees, and is entered into by both parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

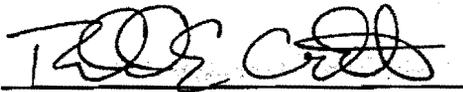
8. This Stipulation of Settlement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9. The parties agree that this Stipulation of Settlement will not be used as evidence or otherwise in any pending or future civil or administrative action against the United States, or

any agency or instrumentality of the United States.

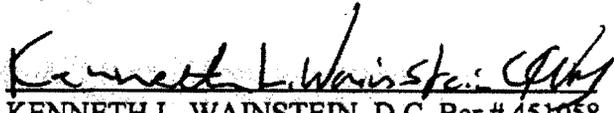
10. Execution of this Stipulation of Settlement by counsel for plaintiff and by counsel for defendants shall constitute a dismissal of these actions with prejudice, effective upon approval by the Court, pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), *provided* that this Court shall retain jurisdiction over enforcement of this Stipulation of Settlement and Dismissal.

Respectfully submitted,

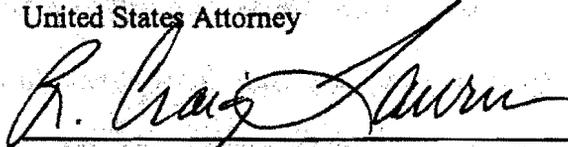


RICHARD E. CONDIT
D.C. Bar # 417786

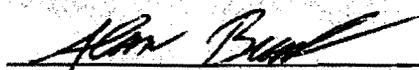
Counsel for Plaintiff



KENNETH L. WAINSTEIN, D.C. Bar # 451058
United States Attorney



R. CRAIG LAWRENCE, D.C. Bar # 171538
Assistant United States Attorney



ALAN BURCH
Assistant United States Attorney
555 4th St., N.W.,
Washington, D.C. 20530
202-514-7204

Counsel for Defendant

SO ORDERED:

Date

District Judge

1 David Beckman, CA Bar Number 156170
2 Natural Resources Defense Council
3 1314 Second Street
4 Santa Monica, CA 90401
5 Phone: (310) 434-2300
6 Fax: (310) 434-2399

7 David C. Vladeck, admitted *pro hac vice*
8 Institute for Public Representation
9 Georgetown University Law Center
10 600 New Jersey Ave., NW
11 Washington, DC 20001
12 Phone: (202) 662-9540
13 Fax: (202) 662-9634

14 Aaron Colangelo, admitted *pro hac vice*
15 Natural Resources Defense Council
16 1200 New York Ave., NW, Suite 400
17 Washington, DC 20005
18 Phone: (202) 289-2376
19 Fax: (202) 289-1060

20 Counsel for Plaintiff

21 James J. Schwartz (D.C. Bar No. 468625)
22 U.S. Department of Justice
23 Civil Division, Federal Programs Branch
24 20 Massachusetts Ave., NW
25 Washington, DC 20001
26 Telephone: (202) 616-8267
27 Fax: (202) 616-8202

28 Counsel for Defendants

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

22	NATURAL RESOURCES DEFENSE)	CV 04-2062 GAF(RZx)
23	COUNCIL, INC.,)	
	Plaintiff,)	JOINT STIPULATION AND
)	PROPOSED ORDER
	v.)	DISMISSING PLAINTIFF'S
)	CLAIMS
26	UNITED STATES DEPARTMENT)	
27	OF DEFENSE, et al.,)	
	Defendants.)	

1 **JOINT STIPULATION AND ~~PROPOSED~~ ORDER DISMISSING**
2 **PLAINTIFF'S CLAIMS**

3 WHEREAS, in March 2004, Plaintiff Natural Resources Defense Council
4
5 (NRDC) brought claims against Defendants United States Department of Defense
6 (DoD), United States Air Force, (Air Force), United States Office of Management
7 and Budget (OMB), and the United States Environmental Protection Agency
8 (EPA) pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq.,
9
10 regarding records concerning perchlorate;

11 WHEREAS NRDC and the EPA previously reached a settlement of the
12
13 claims against EPA thereby causing EPA to be dismissed from the case by order of
14 the Court on October 10, 2006;

15 WHEREAS NRDC, OMB, DoD and Air Force have conferred and reached a
16
17 settlement agreement with regard to NRDC's FOIA request;

18 WHEREAS NRDC, OMB, DoD, Air Force and the EPA have conferred and
19
20 reached a settlement agreement with regard to the payment of NRDC's attorney
21 fees and costs;

22 WHEREAS the parties agree that this Court shall retain jurisdiction
23
24 regarding enforcement of the settlement agreement with regard to the payment of
25 NRDC's attorney fees and costs:
26
27
28



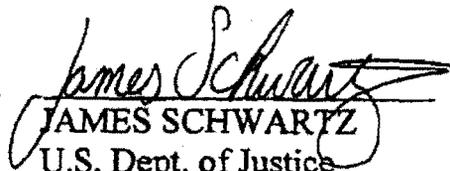
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY STIPULATED, AGREED, AND ORDERED THAT:

1. NRDC dismisses with prejudice all claims against DoD, Air Force and OMB relating to the FOIA requests at issue in this case;
2. This Court shall retain jurisdiction regarding enforcement of the settlement agreement with regard to the payment of NRDC's attorney fees and costs.

Seen and agreed to:

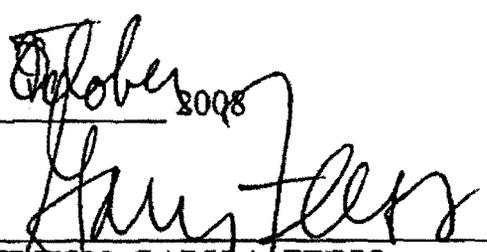

 _____ 09/30/08
 DAVID C. VLADECK Date
 Institute for Public Representation
 Georgetown University Law Center
 600 New Jersey Ave. NW, Rm. 312
 Washington, DC 20001


 _____ 09/30/08
 JAMES SCHWARTZ Date
 U.S. Dept. of Justice
 Civil Division, Federal Programs Branch
 20 Massachusetts Ave, NW, Rm 7310
 Washington, DC 20001

Counsel for Plaintiff

Counsel for Defendants

It is so ORDERED this 2nd day of October 2008



 THE HON. GARY A. FEESS
 United States District Judge



David Beckman, CA Bar Number 156170
Natural Resources Defense Council
1314 Second Street
Santa Monica, CA 90401
Phone: (310) 434-2300
Fax: (310) 434-2399

David C. Vladeck, admitted pro hac vice
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Ave., NW
Washington, DC 20001
Phone: (202) 662-9540
Fax: (202) 662-9634

Aaron Colangelo, admitted pro hac vice
Natural Resources Defense Council
1200 New York Ave., NW, Suite 400
Washington, DC 20005
Phone: (202) 289-2376
Fax: (202) 289-1060

Counsel for Plaintiff

James J. Schwartz (D.C. Bar No. 468625)
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW
Washington, DC 20001
Telephone: (202) 616-8267
Fax: (202) 616-8202

Counsel for Defendants

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

NATURAL RESOURCES DEFENSE)	CV 04-2062 GAF (RZx)
COUNCIL, INC.,)	
Plaintiff,)	
)	
v.)	
)	
UNITED STATES DEPARTMENT)	
OF DEFENSE, et al.,)	
Defendants.)	

SETTLEMENT AGREEMENT – ATTORNEYS’ FEES

Plaintiff Natural Resources Defense Council, Inc. and Defendants United States
Department of Defense, United States Air Force, United States Office of Management and

Budget, and the United States Environmental Protection Agency, through their undersigned counsel, enter into this Settlement for Attorneys' Fees for the sole purpose of satisfying Plaintiff's claim for attorneys' fees, expenses and costs generated in connection with the above-referenced litigation.

The parties agree as follows:

1. Defendants will pay to the Account of the Natural Resources Defense Council, Inc., the amount of \$106,625 to cover attorneys' fees, expenses and costs of all counsel pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(4)(E). This payment is full and final payment for all attorneys' fees, expenses and costs. This figure is inclusive of any interest. Defendants shall make payment to plaintiff NRDC within forty-five days of the date this Settlement Agreement.

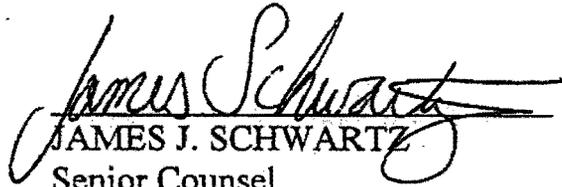
2. Contingent upon receipt of payment pursuant to Paragraph 1 above, Plaintiff hereby releases Defendants from any past, present, or future claims for attorneys' fees, expenses, or costs in connection with this litigation.

3. In consideration of such payment, Plaintiff agrees that it will dismiss with prejudice the above captioned lawsuit.

4. In making this payment, no party is making an admission of liability or fault to any other party, and this Agreement shall not be construed as an admission of liability or fault. This Settlement of Attorneys' Fees will not be used in any manner to establish liability for fees, amounts, or hourly rates, in any other case or proceeding.

Dated: September 30, 2008

GREGORY G. KATSAS
Assistant Attorney General
THOMAS P. O'BRIEN
United States Attorney
Central District of California
ELIZABETH J. SHAPIRO
Assistant Branch Director
Federal Programs Branch



JAMES J. SCHWARTZ
Senior Counsel
Department of Justice
Civil Division
Federal Programs Branch
20 Massachusetts Ave., NW, Rm 7140
Washington, D.C. 20001

Tel: (202) 616-8267
Fax: (202) 616-8202
Email: James.Schwartz@usdoj.gov

Attorneys for Defendants

Dated: September 30, 2008

DAVID BECKMAN
AARON COLANGELO
Natural Resources Defense Council

A handwritten signature in black ink, appearing to read 'D. Vladeck', is written over a horizontal line.

DAVID C. VLADÉCK
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Ave., NW
Washington, DC 20001
Phone: (202) 662-9540
Fax: (202) 662-9634

Attorneys for Plaintiff

Note: For the case captioned, *Reilly v. EPA*, No. 05-10450-RBC (D. Mass.), EPA does not have a copy of the 10/2/06 order closing the case. The order is not available electronically. A copy of the docket sheet is attached indicating on 10/2/06 the entry of an "electronic Order entered Approving Stipulation of Dismissal."

07/26/2006 26 TRANSCRIPT of Evidentiary Hearing held on March 22, 2006 before Judge Collings. Digital Recording: Transcribed by Maryann Young. The original transcripts are maintained in the case file in the Clerk's Office. Copies may be obtained by contacting Maryann Young at 508/384-2003 or the Clerk's Office. (Scafani, Deborah) (Entered: 07/26/2006)

08/08/2006 -- Judge Robert B. Collings : Electronic ORDER entered Noting Joint Status Report. A further joint status report will be filed on or before the close of business on 8/25/06. (Dolan, Kathleen) (Entered: 08/14/2006)

08/25/2006 27 STATUS REPORT (Joint) by Thomas F. Reilly, United States Environmental Protection Agency. (Quinlivan, Mark) (Entered: 08/25/2006)

09/06/2006 -- Judge Robert B. Collings: Electronic ORDER entered. re 27 Status Report filed by United States Environmental Protection Agency, Thomas F. Reilly. A further joint status report is to be filed by cob 9/26/2006. (Entered: 09/06/2006)

09/26/2006 28 STIPULATION of Dismissal (Joint) by Thomas F. Reilly, United States Environmental Protection Agency. (Quinlivan, Mark) (Entered: 09/26/2006)

10/02/2006 -- Judge Robert B. Collings : Electronic ORDER entered APPROVING STIPULATION OF DISMISSAL. (Dolan, Kathleen) (Entered: 10/02/2006)

10/02/2006 -- Civil Case Terminated. (Dolan, Kathleen) (Entered: 10/02/2006)

Copyright © 2011 LexisNexis CourtLink, Inc. All rights reserved.
*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

3. Defendant will continue to withhold Documents EPA-1 through EPA-114, and Documents EPA-117 through EPA-119, as identified in EPA's Vaughn Index for Reilly v. EPA, filed with the Court on July 29, 2005. Plaintiff hereby foregoes any and all claims that Documents EPA-1 through EPA-114, and Documents EPA-117 through EPA-119, should be produced under the Freedom of Information Act.

4. Upon signing this agreement, the parties will file a joint stipulation of dismissal pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure.

5. Defendant agrees to pay plaintiff TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00), which sum shall be in full settlement and satisfaction of any and all claims for "attorney fees and other litigation costs reasonably incurred." Payment of the settlement amount will be made by electronic funds transfer for TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00.). Counsel for Plaintiff will provide the necessary information to counsel for Defendant to effectuate the transfer. Counsel for Defendant agrees that, upon notification of the Court's approval of this Stipulation and receipt of information, he will promptly complete and transmit to the Treasury of the United States the documentation necessary to effectuate this payment.

6. Plaintiff waives his right to file any future request under the Freedom of Information Act for the records at issue in this litigation. The records at issue in this litigation are specified in EPA's Vaughn Index, which EPA filed with the Court in this matter on July 29, 2005.

7. The parties have agreed to the terms and principles articulated in this Settlement Agreement for the sole purpose of settling this litigation, and this Settlement Agreement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault, on the part of either party, their agents, servants, and employees. This Settlement Agreement is entered into

by the parties for the sole purpose of compromising disputed claims under the Freedom of Information Act, and avoiding the expense and risk of further litigation.

8. The terms of this agreement do not establish any general policy and shall have no precedential or binding effect beyond the scope of this specific agreement. The parties agree that this Settlement Agreement will not be used as evidence or otherwise in any pending or future civil or administrative action against the United States, or any agency or instrumentality of the United States.

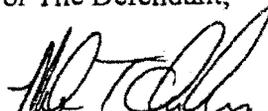
9. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the Settlement Agreement.

For The Plaintiff,



WILLIAM L. PARDEE, BBO #389070
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place – Rm. 1813
Boston, MA 02108
(617) 727-2200, ext. 2419

For The Defendant,



MARK T. QUINLIVAN
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
One Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3606

Dated: September 26, 2006



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
THOMAS F. REILLY, Attorney General)	
of the Commonwealth of Massachusetts,)	Civil Action No. 05-10450 RBC
)	
Plaintiff,)	
)	
v.)	
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Defendant.)	
_____)	

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the parties hereby jointly stipulate to the dismissal of this action, the parties having resolved their differences.

Respectfully submitted:

For The Plaintiff,

For The Defendant,

/s/ William L. Pardee
WILLIAM L. PARDEE, BBO #389070
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place – Rm. 1813
Boston, MA 02108
(617) 727-2200, ext. 2419

/s/ Mark T. Quinlivan
MARK T. QUINLIVAN
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
One Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3606

Dated: September 26, 2006



FLORENCE T. NAKAKUNI (2286)
United States Attorney
District of Hawaii

DERRICK K. WATSON (Cal. Bar No. 154427)
Assistant United States Attorney
District of Hawaii
PJKK Federal Building, Room 6-100
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-3752
Email: derrick.watson@usdoj.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

OUR CHILDREN'S EARTH
FOUNDATION, a non-profit
corporation,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, LISA P. JACKSON,
as Administrator of the United States
Environmental Protection Agency, and
LAURA YOSHII as Acting Regional
Administrator of the United States
Environmental Protection Agency,

Defendants.

Civil No. 08-00426 SOM KSC

STIPULATION AND ORDER
RE: DISMISSAL WITH
PREJUDICE

STIPULATION AND ORDER RE: DISMISSAL WITH PREJUDICE

IT IS HEREBY STIPULATED by and between the above-named parties, through their respective counsel, that, pursuant to the terms of the Settlement Agreement and Release separately entered into between the parties, the above-entitled action is dismissed with prejudice pursuant to Fed.R.Civ.P. 41(a)(1)(ii). This Court expressly reserves jurisdiction to enforce the terms of the Settlement Agreement and Release, as needed.

Dated: October 22, 2009

FLORENCE T. NAKAKUNI
United States Attorney
District of Hawaii

/s/ Derrick K. Watson

DERRICK K. WATSON
Assistant U.S. Attorney
Counsel for Defendants

Dated: October 22, 2009

ENVIRONMENTAL ADVOCATES

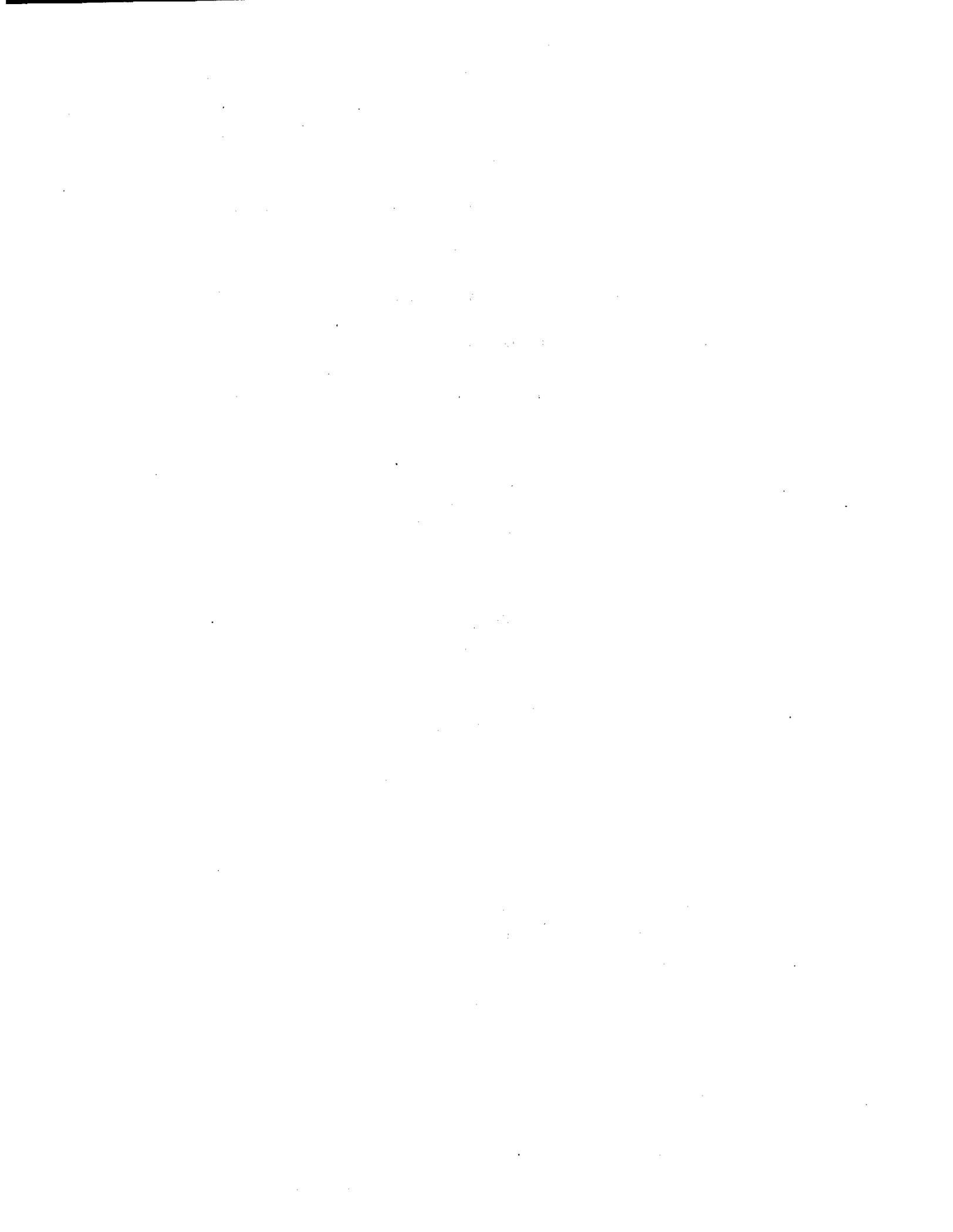
/s/ Christopher Sproul

Christopher Sproul, Esq.
Counsel for Plaintiff

OUR CHILDREN'S EARTH FOUNDATION v.
U.S. ENVIRONMENTAL PROTECTION, et al.

Civil No. 08-00426 SOM KSC

"STIPULATION AND ORDER RE: DISMISSAL WITH PREJUDICE"



APPROVED AND SO ORDERED.

DATED: Honolulu, Hawaii, October 23, 2009.



/s/ Susan Oki Mollway
Susan Oki Mollway
Chief United States District Judge

OUR CHILDREN'S EARTH FOUNDATION v.
U.S. ENVIRONMENTAL PROTECTION, et al.
Civil No. 08-00426 SOM KSC
"STIPULATION AND ORDER RE: DISMISSAL WITH PREJUDICE"



Plaintiff Our Children's Earth Foundation and Defendants U.S.

Environmental Protection Agency ("USEPA"), Lisa P. Jackson, and Laura Yoshii, through their respective counsel, agree and stipulate that the above-captioned action shall be settled and dismissed on the following terms:

1. Following the complete execution of this Settlement Agreement and Release ("Agreement"), Plaintiff shall promptly file a Stipulation of Dismissal with Prejudice ("Dismissal") of the above-captioned action, which expressly reserves this Court's jurisdiction to enforce the terms of this Agreement. The Agreement and Dismissal shall serve as a release of all claims which have been or could have been asserted by Plaintiff, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the above-captioned action.

2. Defendants shall pay Plaintiff the total sum of \$18,914.50 (eighteen thousand nine hundred fourteen and 50/100 dollars) as promptly as practicable following the filing of the Dismissal. Plaintiff and its counsel shall cooperate with Defendants to ensure that all documentation and information necessary to process this payment is complete and accurate. Plaintiff agrees to accept such payment in full settlement and satisfaction of all claims, at both the district court and administrative levels, relating to the Freedom of Information Act ("FOIA")

requests at issue in this action, including all claims for attorney's fees, costs, and other expenses, for which Defendants shall have no further liability or responsibility.

3. Within sixty (60) days of the filing of the Dismissal, Defendants shall release to Plaintiff, subject to a Confidentiality Agreement, certain documents previously withheld by Defendants in response to Plaintiff's FOIA requests in this action. Defendants anticipate that most of such previously withheld documents will be released to Plaintiff, with the exception of documents withheld pursuant to the attorney-client privilege and/or that constitute core work product of the USEPA, in that the disclosure of such documents would materially impair the operations of the agency, including with regard to the enforcement actions against the City and County of Honolulu. For such documents that continue to be withheld notwithstanding this paragraph, Defendants agree to provide to Plaintiff a list of the withheld documents, together with an explanation of the reason(s) the documents will not be released. If Plaintiff disagrees with any of Defendants' withholdings, Plaintiff shall notify Defendants within thirty (30) days of receipt of Defendants' aforementioned list or any such objections shall be deemed waived. The parties further agree to meet and confer in an attempt to informally resolve any

such disagreements, seeking Court intervention only if such informal efforts are not successful.

4. Plaintiff represents and warrants that it is the sole lawful owner of all rights and claims which it has settled and released herein, and that it has not transferred or assigned any of those rights and claims or any interest therein. Plaintiff shall indemnify, hold harmless and defend Defendants, and each of them, together with their present and former agents, servants, or employees, from and against any transferred, assigned, or subrogated interests in those rights and claims.

5. This Agreement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of Defendants, their present or former agents, servants, or employees, and it is specifically denied that they are liable to Plaintiff. This Agreement is entered into by all parties for the purpose of compromising disputed claims under the FOIA and avoiding the time, expense and risk of further litigation. This Agreement may not be used against Defendants as evidence or otherwise in any civil or administrative action or proceeding, except for proceedings necessary to implement or enforce the terms herein.

6. Plaintiff acknowledges that it has not relied on any representations by Defendants, their present or former agents, servants, or employees, as to the tax



consequences of this Agreement or any payments made by Defendants herein.

Plaintiff shall be solely responsible for compliance with all federal, state and local tax requirements or obligations arising from this Agreement.

7. The persons signing this Agreement warrant and represent that they possess full authority to bind the persons or entities on whose behalf they are signing to the terms of the Agreement.

8. This Agreement contains the entire agreement between the parties and supersedes any and all previous agreements, written or oral, relating to the subject matter herein. No promise or inducement has been made except as set forth herein and in the parties' separate Joint Prosecution and Confidentiality Agreements, and no representation or understanding, whether written or oral, that is not expressly set forth herein shall be enforced or otherwise be given any force or effect.

9. This Agreement may not be modified or amended, except in writing signed by each of the parties herein.

10. The parties acknowledge that the preparation of this Agreement was collaborative with all parties represented by counsel of their choosing. Therefore, the parties agree that any presumption or rule that this Agreement should be construed against the drafter shall not apply to the interpretation of this Agreement or any term or phrase herein.

11. The provisions of this Agreement are severable, such that any provision determined to be invalid or unenforceable shall not render or cause the entire Agreement to fail or affect the validity or enforceability of the other provisions, which shall be enforced without the severed provision.

12. If any party believes that there has been a breach of this Agreement, that party shall provide written notice to the others of the alleged breach. The parties shall meet and confer in order to attempt to resolve the dispute within fifteen (15) days of the written notice, or such time thereafter as is mutually agreed. If the parties are unable to resolve the dispute within thirty (30) days of such notice, any party may bring the dispute to the Court's attention.

|||

|||

|||

|||

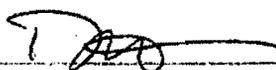
|||

|||

13. This Agreement may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

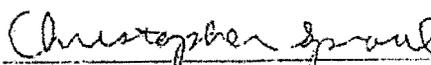
Dated: October 22, 2009.

FLORENCE T. NAKAKUNI
United States Attorney
District of Hawaii


DERRICK K. WATSON
Assistant U.S. Attorney
Counsel for Defendants

Dated: October 22, 2009

ENVIRONMENTAL ADVOCATES


Christopher Sproul, Esq.
Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

GLYNN ENVIRONMENTAL)
COALITION)

v.)

Case No. CV 209-02

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY)

ORDER

The stipulation for dismissal filed January 5, 2010 is hereby **APPROVED**. Plaintiff Glynn Environmental Coalition's claims against Defendant United States Environmental Protection Agency are hereby dismissed with prejudice.

SO ORDERED this 16 day of February, 2010.



HONORABLE LISA GODBEY WOOD
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

GLYNN ENVIRONMENTAL)
COALITION)
)
 Plaintiffs,)
)
 v.)
)
 UNITED STATES)
 ENVIRONMENTAL)
 PROTECTION AGENCY)
)
 Defendants.)
_____)

Case No. CV209-002

PLAINTIFFS NOTICE OF FILING A STIPULATION OF DISMISSAL

COMES NOW Glynn Environmental Coalition ("GEC"), Plaintiff in the above-styled action, and submits this its Notice of Filing a Stipulation of Dismissal of all claims, showing the Court that both parties have come to a mutually agreeable settlement and this dismissal has been signed by all parties. This dismissal shall serve to dismiss the action in its entirety, with prejudice, including all claims asserted against Defendant EPA.

Respectfully submitted this 5th day of January, 2010.

/s/ Donald D.J. Stack

Donald D.J. Stack - Ga. Bar # 673735
For Plaintiff GEC

STACK & ASSOCIATES, P.C.
260 Peachtree Street - Suite 1200
Atlanta, Georgia 30303
(404) 525-9205 VOICE
(404) 522-0275 FAX

/s/ James L. Coursey, Jr.
James L. Coursey, Jr. - Ga. Bar # 190602
For Defendant EPA

Assistant United States Attorney
100 Bull Street
Savannah, Georgia 31401
Tel: (912) 652-4422
Fax: (912) 652-4227
Jimmy.Coursey@usdoj.gov

in full settlement and satisfaction of all claims brought in the above-styled action.

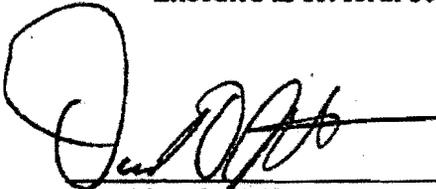
3. In consideration of the terms detailed in paragraph 2 above, the plaintiff agrees to dismiss all claims brought under the Freedom of Information Act pertaining to the release of documents responsive to his FOIA request dated March 20, 2008. The plaintiff further agrees to dismiss all administrative appeals cognizable under the FOIA pertaining to his FOIA request dated March 20, 2008, if any exists. The plaintiff further agrees that in exchange for the payment of \$62,668.00 in complete settlement and satisfaction of this lawsuit, he will not seek any re-opening of this case in the district court for the purpose of litigating the merits of the case or the award of attorney's fees or expenses.

4. Within ten days of the execution of this agreement by all parties, through authorized counsel, the Environmental Protection Agency agrees to submit the settlement agreement for processing for payment. Payment will be made either by electronic funds transfer or by a United States Treasury check made payable to Donald D. J. Stack, Esq. By his signature below, Mr. Stack stipulates that he is authorized to receive payment on plaintiff's behalf by either check or by electronic funds transfer to an account designated by him on the plaintiff's behalf.

5. Except as provided in paragraphs 1, 2 and 3, *supra*, the parties each will bear their own costs, fees and expenses, if any.

6. This Settlement Agreement fully and completely expresses the entire understanding among the parties on the subject matter hereof and cannot be modified or amended except by an instrument in writing signed by the parties. No statement, remark, agreement or understanding, oral or written, which is not contained herein, shall be recognized or enforced.

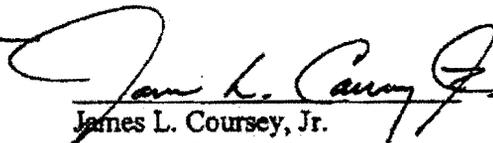
Executed as set forth below:



Donald D. J. Stack, Esq.
Stack & Associates
GA Bar. No 673735
260 Peachtree Street
Suite 1200
Atlanta, GA 30303

Counsel for the Plaintiff

Dated: 12-14-09



James L. Coursey, Jr.
Assistant United States Attorney
GA Bar. No. 190602
P.O. Box 8970
Savannah, GA 31412
(912) 652-4422

Counsel for the Defendant

Dated: 12-14-09



There is no judicial order closing the case captioned, *Judicial Watch v. Department of Energy*, No. 10-0246 (HHK) (DDC). It was closed after the parties' joint stipulation of dismissal. A copy of the docket sheet is attached.

US District Court Civil Docket

**U.S. District - District of Columbia
(Washington DC)**

1:10cv246

Judicial Watch, Inc v. US Department of Energy et al

This case was retrieved from the court on Monday, February 28, 2011

Date Filed: 02/18/2010	Class Code: CLOSED
Assigned To: Judge Henry H Kennedy	Closed: Yes
Referred To:	Statute: 05:552
Nature of suit: FOIA (895)	Jury Demand: None
Cause: Freedom of Information Act	Demand Amount: \$0
Lead Docket: None	NOS Description: Foia
Other Docket: None	
Jurisdiction: U.S. Government Defendant	

Litigants

Attorneys

Judicial Watch, Inc
Plaintiff

David Francis Rothstein
[COR LD NTC]
Judicial Watch, Inc
425 Third Street, SW
Suite 800
Washington , DC 20024
USA
(202) 646-5172
Email: DROTHSTEIN@JUDICIALWATCH.ORG

Paul J Orfanedes
[COR LD NTC]
Judicial Watch, Inc
425 Third Street, SW
Suite 800
Washington , DC 20024
USA
(202) 646-5172
Fax: (202) 646-5199
Email: PORFANEDES@JUDICIALWATCH.ORG

US Department of Energy
Defendant

Benton Gregory Peterson
[COR LD NTC]
Assistant United States Attorney
Judiciary Center Building
Civil Division
555 Fourth Street, NW
Room E4905
Washington , DC 20530
USA
(202) 514-7238
Fax: (202) 515-8780
Email: Benton.peterson@usdoj.gov

US Environmental Protection Agency

Benton Gregory Peterson

Defendant

[COR LD NTC]
 Assistant United States Attorney
 Judiciary Center Building
 Civil Division
 555 Fourth Street, NW
 Room E4905
 Washington , DC 20530
 USA
 (202) 514-7238
 Fax: (202) 515-8780
 Email: Benton.peterson@usdoj.gov

Date	#	Proceeding Text
02/18/2010	1	COMPLAINT against U.S. DEPARTMENT OF ENERGY, U.S. ENVIRONMENTAL PROTECTION AGENCY (Filing fee \$ 350, receipt number 4616027496) filed by JUDICIAL WATCH, INC.. (Attachments: # 1 Civil Cover Sheet)(dr) (Entered: 02/22/2010)
02/18/2010	--	SUMMONS (4) Issued as to U.S. DEPARTMENT OF ENERGY, U.S. ENVIRONMENTAL PROTECTION AGENCY, U.S. Attorney, and U.S. Attorney General (dr) (Entered: 02/22/2010)
02/18/2010	2	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests NONE by JUDICIAL WATCH, INC. (dr) (Entered: 02/22/2010)
03/03/2010	3	SUMMONS Returned Executed by JUDICIAL WATCH, INC.. U.S. DEPARTMENT OF ENERGY served on 2/25/2010, answer due 3/29/2010; U.S. ENVIRONMENTAL PROTECTION AGENCY served on 2/25/2010, answer due 3/29/2010. (Attachments: # 1 Declaration of Cristina Rotaru) (Rothstein, David) Modified dates of service on 3/4/2010 (znmw,). (Entered: 03/03/2010)
03/04/2010	--	Set/Reset Deadlines: Answer due by 3/29/2010, (znmw,) (Entered: 03/04/2010)
03/04/2010	--	NOTICE OF CORRECTED DOCKET ENTRY: Docket Entry 3 Summons Returned Executed in FOIA case and the answer deadline has been modified to reflect the correct date of service on the U.S. Attorney. (znmw,) (Entered: 03/04/2010)
03/22/2010	4	NOTICE of Appearance by Benton Gregory Peterson on behalf of U.S. DEPARTMENT OF ENERGY, U.S. ENVIRONMENTAL PROTECTION AGENCY (Peterson, Benton) (Entered: 03/22/2010)
03/26/2010	5	ANSWER to 1 Complaint by U.S. DEPARTMENT OF ENERGY, U.S. ENVIRONMENTAL PROTECTION AGENCY.(Peterson, Benton) (Entered: 03/26/2010)
06/03/2010	6	NOTICE of Change of Address by Paul J. Orfanedes (Orfanedes, Paul) (Entered: 06/03/2010)
06/04/2010	7	NOTICE of Change of Address by David Francis Rothstein (Rothstein, David) (Entered: 06/04/2010)
10/04/2010	8	ORDER for the parties to submit a joint case management report no later than November 1, 2010. Signed by Judge Henry H. Kennedy, Jr. on October 4, 2010. (lchhk3) (Entered: 10/04/2010)
11/01/2010	9	STIPULATION of Dismissal and Joint Status by U.S. DEPARTMENT OF ENERGY, U.S. ENVIRONMENTAL PROTECTION AGENCY. (Peterson, Benton) (Entered: 11/01/2010)

Copyright © 2011 LexisNexis CourtLink, Inc. All rights reserved.
 *** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.)	
425 3rd Street, S.W., Suite 800)	
Washington, DC 20024)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 10-0246 (HHK)
)	
)	
U.S. DEPARTMENT OF ENERGY et. al)	
1000 Independence Avenue, S.W.)	
Washington, DC 20585-0001)	
)	
Defendants.)	
)	

STIPULATION OF VOLUNTARY DISMISSAL

Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), the parties hereby agree to a voluntary dismissal of the above-captioned matter.

In order to avoid the expenses and risks of further litigation, the parties have agreed to dismiss, with prejudice, the above-captioned action as follows:

1. Plaintiff agrees to discharge, release, and withdraw any claims of access to records or portions of records sought in this Freedom of Information Act suit regarding its records requests identified in its complaint in this matter.

Defendants agree to reimburse plaintiff the \$350 filing fee associated with the above captioned matter. Said fee will be paid to Plaintiff by Defendants within 60 days of the filing of this stipulation.

2. This stipulation shall represent full and complete satisfaction of all claims arising from the allegations set forth in the complaint filed in this action,

including full and complete satisfaction of all claims for costs and attorneys fees that have been, or could be, made in this case.

3. This stipulation shall not constitute an admission of liability or fault on the part of the Defendants, the United States, its agents, servants, or employees, and is entered into by both parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

4. The parties agree that this stipulation will not be used as evidence or otherwise in any pending or future civil or administrative action against the United States, or any agency or instrumentality of the United States.

5. Undersigned counsel are fully authorized to enter into this stipulation on behalf of their respective clients.

Dated: November 1, 2010

Respectfully Submitted,

JUDICIAL WATCH, INC.

/s/ David F. Rothstein

D.C. Bar No. 450035

425 Third Street, S.W.

Suite 800

Washington, DC 20024

Tel: (202) 646-5172

Fax: (202) 646-5199

Attorneys for Plaintiff

RONALD C. MACHEN JR., Bar #447889

United States Attorney

for the District of Columbia

RUDOLPH CONTRERAS, Bar #434122

Chief, Civil Division

By: /s/

BENTON PETERSON Bar # 1029849

Asst. United States Attorney

555 4th Street, NW,

Washington, DC 20530

Attorneys for Defendants



Report of the Chief FOIA Officer
to the
U.S. Department of Justice

Malcolm D. Jackson
Chief Information Officer and
Chief FOIA Officer

March 1, 2011

U.S. Environmental Protection Agency
Chief Freedom of Information Act Officer's Report
To the Attorney General

I. Steps Taken to Apply the Presumption of Openness

- a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines were publicized throughout EPA.**

EPA Administrator Lisa P. Jackson issued a memorandum on April 23, 2009, to all employees to reinforce the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. The memorandum states that management should support staff in meeting FOIA's transparency requirement in a timely and efficient manner. In addition, FOIA Officers in each of EPA's ten regions who administer day-to-day FOIA activities and their Headquarters' counterparts (e.g., FOIA Coordinators) disseminated Administrator Jackson's memorandum to all staff with FOIA responsibilities in their organizations. The memoranda are posted on EPA's FOIA website (<http://www.epa.gov/foia/reference.html>).

- b. What training has been attended and/or conducted on the new FOIA Guidelines?**

EPA's National FOIA Program conducts monthly meetings with regional FOIA Officers and FOIA Coordinators at which the new FOIA Guidelines are discussed. The new FOIA Guidelines are posted on EPA's *Processing FOIA Requests* webpage (http://www.epa.gov/foia/Processing_FOIA_Requests.html). Regional FOIA Officers and Headquarter FOIA Coordinators also provide training to their FOIA staffs. EPA staff attended DOJ's training for FOIA Attorneys and Professionals in 2010. National FOIA Program staff or the Chief FOIA Officer attended all of the Chief FOIA Officers meetings hosted by the Department of Justice.

- c. How has EPA created or modified internal guidance to reflect the presumption of openness?**

Administrator Jackson directed staff to review documents with a presumption of release. EPA's national FOIA Requestor Service Center and the Office of General Counsel provide guidance to staff about processing requests with an eye toward a presumption of openness.

- d. To what extent has EPA made discretionary releases of otherwise exempt information?**

EPA has not tracked discretionary releases of otherwise exempt information. The Agency reviews all exempt information with an eye toward discretionary release as directed by Administrator Jackson in her April 23, 2009 memorandum. EPA processed 10,071 FOIA requests in FY10. Of these requests, only 707 requests had records withheld in full or part -- approximately 7%.

- e. What exemptions would have covered the information that was released as a matter of discretion?**

Exemptions 2, 5, 7, and 9 would have covered the information that was released as a matter of discretion.

- f. How does EPA review records to determine whether discretionary releases are possible?**

EPA reviews all responsive records with an eye toward discretionary releases. Individuals with questions receive assistance from the National FOIA Program, Regional FOIA Officers and the Office of General Counsel. Efforts are underway to develop written guidance to ensure consistency in making discretionary releases across the Agency.

- g. Describe any other initiatives undertaken by EPA to ensure that the presumption of openness is applied.**

In matters under appeal, records or portions of records that were previously withheld are being reviewed, applying the new policy and presumption of disclosure. The National FOIA Officer includes a discussion of applying the presumption of openness at monthly meetings with regional FOIA Officers and FOIA Coordinators.

II. Steps Taken to Ensure that EPA has an Effective System in Place for Responding to Requests

a. Do FOIA professionals within EPA have sufficient IT support?

Yes, EPA's FOIA professionals have sufficient IT support through access to a national electronic tracking system and redaction software. The Deputy Administrator's FOIA Workgroup identified additional tools and technologies to ensure that employees continue to have what they need to efficiently respond to FOIA requests.

b. Describe how EPA's FOIA professionals interact with EPA's Open Government Team.

EPA's National FOIA Program Office and the Open Government Directive Project Management Office are located in the same organization and report to the same senior leader. The National FOIA Officer and FOIA staff is members of the Open Government Directive Workgroup. The FOIA Officer provides FOIA updates to EPA's quarterly Open Government Directive report.

c. Describe steps EPA has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

EPA's Deputy Administrator established an Agency-wide FOIA Workgroup in July 2010 to review all aspects of the Agency's FOIA program, including staffing levels. The FOIA Workgroup is completing its review and will provide recommendations to the Deputy Administrator in Q2, FY2011.

d. Describe any other steps EPA has undertaken to ensure that the Agency's FOIA system operates efficiently and effectively.

The Agency is conducting a comprehensive review of its FOIA system as directed by the Deputy Administrator. The review includes reviewing EPA's regulations, policies, procedures and technology to determine if changes are needed to facilitate and support transparency, proactive disclosures and accountability. In addition to the monthly meetings held with regional FOIA Officers and FOIA Coordinators by the National FOIA Officer, the Agency funds a help desk for its electronic FOIA tracking system. The help desk provides system training and technical support. By providing this support, new staff can receive timely training on the FOIA system and responses to technical issues or questions can be quickly resolved.

III. Steps Taken to Increase Proactive Disclosures

a. Has EPA added new material to the Agency's website since last year?

EPA continuously posts new records to epa.gov.

b. What types of records have been posted?

Records relating to the BP oil spill, mountaintop mining decisions and new air and water protection regulations are examples of significant postings of interest to the public for which a FOIA requests is no longer necessary.

c. Give examples of the types of records EPA now posts that used to be available only by making a FOIA request for them.

The following types of records are now posted that previously were only available by making a FOIA request: property records; lists of granted fee waivers; request status; and monthly progress reports providing data on number of requests, overdues and appeals broken down by Headquarters and regions. See response to Item III b. Of particular interest are materials relating to the Open Government Directive; FOIA Dashboard; statistics on fee waivers granted; and a request status report.

d. What system do you have in place to routinely identify records that are appropriate for posting?

Regional FOIA Officers and Coordinators are asked at the monthly conference calls hosted by the National FOIA Officer to identify records that are appropriate for posting. The records may be chosen due to the number of FOIA requests for them or selected by a group within their organization to be of public interest.

e. How do you utilize social media in disseminating information?

EPA's Administrator leads the Agency's effort to utilize social media to disseminate information through her Facebook and Twitter accounts. EPA is using social media tools in the firm belief that by sharing and experimenting with information, the potential for better understanding about environmental conditions and solutions is increased. Collaboration among individual or groups to solve problems is particularly exciting when people bring "different parts of the puzzle" to help find solutions. In addition to Facebook and Twitter, EPA has a presence on YouTube, Flickr Challenge.gov and hosts a blog called Greenversations (<http://blog.epa.gov/blog/>).

f. Describe any other steps taken to create proactive disclosures at EPA.

The National FOIA Program hosted to a booth to demonstrate *MyPropertyInfo* at the Agency's national environmental information symposium in 2010, which was attended by over 500 Agency employees, supporting contractors and vendors. (See VI. *Spotlight on Success.*)

IV. Steps Taken to Greater Utilize Technology

1a. What proportion of the components within EPA which receive FOIA requests have the capability to receive such requests electronically?

One hundred (100) percent of EPA's components receive FOIA requests electronically.

1b. To what extent has EPA increased the number of components doing so since the filing of the last Chief FOIA Officer Report?

Not applicable.

1c. What methods do EPA use to receive requests electronically?

EPA uses the following methods to receive requests electronically: webform, email and fax. The fax transmittals are digitized and received as a message in the National FOIA Program e-mail in-box.

2a. What proportion of components within EPA which receive FOIA requests have the capability to track such requests electronically?

One hundred (100) percent of EPA's components track FOIA requests electronically.

2b. To what extent have you increased the number of components doing so since the filing of the last Chief FOIA Officer Report?

Not applicable.

2c. What methods do EPA use to track requests electronically?

EPA uses commercial off-the-shelf software to track requests electronically.

3a. What proportion of components at EPA which receive FOIA requests have the capability to process such requests electronically?

One hundred (100) percent of EPA's components process FOIA requests electronically.

3b. To what extent has EPA increased the number of components doing so since the filing of the last Chief FOIA Officer Report?

Not applicable.

3c. What methods do EPA use to process requests electronically?

EPA uses commercial off-the-shelf software to track and process requests electronically. The Agency also has developed collection databases which are used to manage search and review activities for large numbers of electronic documents covering a common topic.

4a. Why type of technology does EPA use to prepare the Annual FOIA Report?

EPA uses commercial off-the-shelf software to prepare the Annual FOIA Report.

4b. If EPA is not satisfied with the existing system to prepare the Annual FOIA Report, describe the steps taken to increase the use of technology for next year.

The existing system to prepare the Annual FOIA Report is currently meeting Agency's needs.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. Report whether the backlog is decreasing by measuring in two ways. First, report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether EPA closed in FY 2010 the ten oldest of those pending requests and appeals from FY 2009, and if not, report how many of them EPA did close.

EPA's backlog at the end of fiscal year 2010 decreased by three. EPA's administrative appeals decreased by two.

EPA closed fourteen of its twenty oldest pending requests and appeals from FY 2009.

2a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?

Not applicable.

2b. Is the backlog increase caused by loss of staff?

Not applicable.

2c. Is the backlog increase caused by an increase in the complexity of the requests received?

Not applicable.

2d. What other causes, if any, contributed to in the increase in the backlog?

Not applicable.

3a. Does EPA routinely set goals and monitor the progress of the FOIA caseload?

Yes. EPA monitors the progress through the monthly dashboard which is available on the FOIA website.

3b. Has EPA increased its FOIA staffing?

EPA has added one FTE to the National FOIA Program.

3c. Has EPA made IT improvements to increase timeliness?

Yes. The *MyPropertyInfo* tool (<http://www.epa.gov/myproperty/>) allows the public to obtain information immediately that was previously only available in response to a FOIA request. See *Spotlight on Success* section, below.

3d. Has EPA's Chief FOIA Officer been involved in overseeing EPA's capacity to process requests?

The Chief FOIA Officer participates in the Chief FOIA Officer meetings hosted by the Department of Justice and has requested several briefings on FOIA activities.

VI. Spotlight on Success

EPA's FOIA Office developed a tool that allows the public direct access to site-specific information contained in multiple Agency environmental databases. The tool, *MyPropertyInfo*, combines multiple EPA database searches into a single printable report. The searches, now performed by the public online, were previously conducted by EPA staff in response to a FOIA request. Inquiries may be as specific as an address on a street or broad as the name of the street within a city or zip code. *MyPropertyInfo* was made available on the Agency's FOIA homepage on June 25, 2010 (<http://www.epa.gov/mproperty>).

A review of FOIA requests revealed that the most frequently requested information from the public is for records on specific locations to determine potential environmental hazards prior to real estate transactions. Further research revealed that most of EPA's "no record responses" were in response to these requests. The public can now obtain responses immediately and the number of no record responses has noticeably dropped since the deployment of *MyPropertyInfo*. The tool's primary customers are real estate agents, mortgage bankers and engineering and environmental consulting firms who are required to provide documentation for property transactions. The secondary audience is individual homebuyers.

Over the past three fiscal years, the number of incoming requests has remained approximately 10,500. However, in FY08 EPA sent 4,554 no record response letters; 5,181 in FY09; and 3,808 in FY10 – a decrease of 27% in the last quarter of the FY in which *MyPropertyInfo* was released.



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Special Report

Congressionally Requested Inquiry Into EPA's Handling of Freedom of Information Act Requests

Report No. 11-P-0063

January 10, 2011

Report Contributors:

Christine Baughman
Allison Dutton
Ryan Patterson
Russell Moore
Elizabeth Grossman
Eric Lewis

Abbreviations

EPA	U.S. Environmental Protection Agency
FOIA	Freedom of Information Act
OIG	Office of Inspector General



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

Two members of Congress asked the Inspector General to review how the U.S. Environmental Protection Agency (EPA) handles requests under the Freedom of Information Act (FOIA). They were particularly interested in whether and, if so, the extent to which political appointees are made aware of information requests and have a role in request reviews or decisionmaking.

Background

FOIA gives the public the right to ask for records possessed by federal government agencies. Under EPA regulations, the head of an office, or that individual's designee, is authorized to grant or deny any request for EPA records. The heads of EPA's 23 major offices are political appointees.

For further information, contact our Office of Congressional, Public Affairs and Management at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2011/20110110-11-P-0063.pdf

Congressionally Requested Inquiry Into EPA's Handling of Freedom of Information Act Requests

What We Found

We concluded that EPA does not have a process to filter FOIA requests by political appointees. EPA policy permits releasing information at the lowest practicable level. Generally, political appointees are not involved in deciding FOIA requests, unless there is denial of information. We found exceptions, but political appointees were usually involved only to sign denials or partial denials. FOIA coordinators provided regular status reports on the processing of FOIA requests to managers at various levels within the office. In 3 of the 11 offices we reviewed, those managers were political appointees. However, none of the offices required routine review of FOIA requests by a political appointee.

In response to comments from EPA staff on the draft report, we made some minor wording changes.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

January 10, 2011

MEMORANDUM

SUBJECT: Congressionally Requested Inquiry into EPA's Handling of
Freedom of Information Act Requests
Report No. 11-P-0063

FROM: Wade T. Najjum
Assistant Inspector General for Program Evaluation

A handwritten signature in black ink, appearing to read "Wade T. Najjum", is written over the printed name.

TO: Malcolm D. Jackson
Assistant Administrator for Environmental Information and
Chief Information Officer

This is our report on the subject review conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The estimated cost of this report, calculated by multiplying the project's staff days and expenses by the applicable daily full cost billing rates in effect at the time, is \$113,770.

Action Required

Because this report contains no recommendations, you are not required to respond to this report. However, if you submit a response, it will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal. We have no objections to the further release of this report to the public. We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Eric Lewis, Director, Special Reviews, at 202-566-2664 or lewis.eric@epa.gov; or Russell Moore, Project Manager, at 202-566-0808 or moore.russell@epa.gov.

Purpose

On August 23, 2010, Senator Charles E. Grassley, Ranking Member of the U.S. Senate Committee on Finance, and Congressman Darrell Issa, Ranking Member of the House Oversight and Government Reform Committee, requested the Inspector General, U.S. Environmental Protection Agency (EPA), to review EPA's Freedom of Information Act (FOIA) office to determine whether political appointees are made aware of information requests and have a role in reviews or decisionmaking related to those requests. They wanted to know whether EPA was engaged in political filtering of information.

Background

FOIA gives the public the right to ask for records possessed by federal government agencies. In 2002, EPA published regulations describing how it will process FOIA requests. One section provides that the head of an office, or that individual's designee, is authorized to grant or deny any request for a record of that office or other EPA records when appropriate. This regulation is consistent with a 1983 EPA delegation of authority; it gives the heads of major offices authority to make initial determinations related to FOIA requests, but allows them to delegate their authority (1) down to the division director level if EPA is denying release of all or part of the records based on a FOIA exemption, and (2) to an even lower level if all of the requested records are being released.

Including the Office of the Administrator, EPA has 23 major offices. The heads of these offices, as well as some of their deputies, are political appointees. In total, EPA has identified 67 positions that are filled by political appointees. These positions are subject to noncompetitive appointment because the duties may involve advocacy of administration policies and programs, and the incumbents usually have a close and confidential working relationship with the Agency or other key officials.

EPA has assigned staff to manage its FOIA process, including a national FOIA officer in the Office of Environmental Information, a FOIA officer in each region, and a FOIA coordinator for each of the major program offices. To track the FOIA requests, EPA uses an information management system called "FOIAXpress." Overall, EPA's FOIA process is decentralized. Each of the 23 major offices has established its own internal procedures for handling FOIA requests.

Scope and Methodology

We conducted this review from September through December 2010. The work centered on evaluating a sample of 50 FOIA requests to determine who was involved in processing them. These requests were selected from a universe of 157 requests EPA received between January 21, 2009, and August 31, 2010, that

concerned one of the following subjects the Office of Inspector General (OIG) believed might be of particular interest to EPA political appointees:

- BP oil spill
- Climate change
- Coal ash
- Environmental justice
- Hydraulic fracturing, or fracking
- Mountaintop mining

We identified the universe of requests by searching FOIAXpress. We reviewed the documentation in FOIAXpress associated with the 50 sample items. Except for inquiring about missing documentation, we did not evaluate the accuracy of the data in FOIAXpress. We interviewed the FOIA officer or FOIA coordinator for the following 11 organizations that processed the 50 requests under review:

- Office of the Administrator
- Office of Air and Radiation
- Office of Enforcement and Compliance Assurance
- Office of Inspector General
- Office of Solid Waste and Emergency Response
- Office of Water
- Region 1
- Region 3
- Region 4
- Region 5
- Region 6

For some requests, we also interviewed other EPA employees who were involved in responding. The interviews included a review of FOIA procedures for that office. In addition, we interviewed the EPA national FOIA officer.

We did not test the internal controls related to processing FOIA requests. Controls were evaluated during a prior review by the OIG. The related report, Report No. 09-P-0127, *EPA Has Improved Its Response to Freedom of Information Act Requests But Further Improvement Is Needed*, was issued on March 25, 2009. EPA is still implementing the corrective actions recommended in that report.

We conducted our work in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based upon our objectives.

Results

We concluded that EPA does not have a FOIA process that results in the filtering of requests by political appointees. Generally, political appointees are not involved in the FOIA process, either by policy or in practice. With few exceptions, information is released at the lowest practicable level, which EPA permits. Political appointees are usually involved only to sign denials or partial denials, as was the case in 2 of the 11 offices that we reviewed.

Of the 50 FOIA requests in our sample, political appointees were involved in only 7 of them. In two cases, political appointees were asked to search for responsive records. In four cases, a political appointee signed the response letter because the request resulted in partial denial of information. In one case, a political appointee signed the response letter even though all records were given to the requester, which was done at the discretion of the FOIA coordinator and was not directed by the political appointee.

Requests Are Not Filtered by Political Appointees

FOIA staff at headquarters and the regions are not political appointees. They review FOIA requests to determine who in their office might have responsive records. The organizational location of the FOIA staff varied across the 11 major offices we reviewed. Of the 11 FOIA officers and coordinators interviewed, 2 (for the Office of Air and Radiation and the Office of Enforcement and Compliance Assurance) work in the immediate office of the assistant administrator (a political appointee). However, these two coordinators have a process that is similar to the other nine offices that we reviewed; they assign all requests to staff without the involvement of the assistant administrator, and neither office specifies a role for political appointees in the FOIA process.

Staff Throughout EPA Collect Relevant Records

The FOIA officers and coordinators ask EPA offices with responsive records to provide them. Two of the sampled FOIA requests involved political appointees searching for records. However, in both cases, office staff searched for relevant records and forwarded what they had to the response coordinator for further action. The political appointee had no further involvement with the request.

Political Appointees Sign Denial Letters For Two Offices

Two of the 11 major offices we reviewed (Region 3 and Office of the Executive Secretariat, in the Office of the Administrator) had a political appointee sign all denial and partial denial response letters. Region 3 policy requires the regional administrator to sign all denial and partial denial response letters. None of the eight Region 3 response documents to FOIA requests we reviewed were signed by a political appointee, and none involved denials. The Office of the Executive

Secretariat has the director (who is a political appointee) sign all denial and partial denial letters. This practice ensures compliance with EPA policy that a division director or higher sign all denials or partial denials. The Director for the Office of the Executive Secretariat signed the response letters for five of the FOIA requests in our sample.

FOIA Staff Keeps Management Informed

The FOIA staff keeps EPA management informed about the FOIA process. All the FOIA officers and coordinators provided reports on FOIA processing to managers at various levels in the office. In 3 of the 11 major offices reviewed, the manager who received the reports was a political appointee.

Special Cases Do Not Involve Political Filtering

FOIA requests related to the BP oil spill are being monitored on an EPA-wide basis to ensure consistency in the responses due to the large number of documents requested and the significance of the issues involved. A staff member in the Office of General Counsel is notified when BP-related requests are received and when EPA responds. However, for BP-related requests that we reviewed, the response was sent to the Office of General Counsel after the information was released to the requester. At the time of our interviews, no political appointees from the Office of General Counsel were involved in processing these FOIA requests.

EPA has received numerous FOIA requests related to climate change, particularly regarding the April 2009 endangerment finding on greenhouse gases. To ensure EPA offices were handling these requests consistently, an informal work group was formed to review records. None of the members of this work group were political appointees.

Conclusion

Our analysis shows that political appointees at EPA are generally not involved in processing, screening, or approving FOIA requests. Even though our sample included only requests related to controversial subjects, political appointees were involved with 7 of the 50 instances reviewed. The activities of political appointees in the FOIA process at EPA generally include signing denials and partial denials, and receiving reports on FOIA processing. We found no evidence of systematic screening of FOIA requests by political appointees. Based on our review of their program, we conclude that the EPA does not have a process to filter FOIA requests by political appointees.

Agency Response and OIG Comment

To ensure the accuracy of this report, on December 8, 2010, we provided a draft to the Office of Environmental Information for review. In a memorandum dated January 7, 2011, the Assistant Administrator for Environmental Information agreed with the OIG conclusions. Based on Agency comments on the draft report, we made some minor wording changes. This memorandum is included as Appendix A.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
No recommendations							

- 1 O = recommendation is open with agreed-to corrective actions pending
- C = recommendation is closed with all agreed-to actions completed
- U = recommendation is undecided with resolution efforts in progress

Agency Response



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENVIRONMENTAL INFORMATION

Jan – 7 2011

MEMORANDUM

SUBJECT: Draft Report: Congressionally Requested Inquiry Into EPA's Handling of Freedom of Information Act Requests - Project No. OPE-FY10-0027

FROM: Malcolm D. Jackson
Assistant Administrator and Chief Information Officer

TO: Eric Lewis
Director, Special Reviews
Office of Program Evaluation
Office of the Inspector General

Thank you for the opportunity to review the draft report "Congressionally Requested Inquiry Into EPA's Handling of Freedom of Information Act Requests," Project No. OPE-FY10-0027.

The U.S. Environmental Protection Agency (EPA) is committed to conducting its business in an open and transparent manner and takes pride in the quality of customer service it provides to Freedom of Information Act (FOIA) requesters. The Agency will continue to review its FOIA administration activities to identify opportunities to further strengthen and enhance its policies, procedures and processes. I understand that a few minor technical errors were communicated to your staff and will be corrected in the final report.

If you have any questions about EPA's FOIA Program, please feel free to contact Larry F. Gottesman, EPA National FOIA Officer, at (202) 566-2162.

Distribution

Office of the Administrator
Assistant Administrator for Environmental Information and Chief Information Officer
Agency Followup Official (the CFO)
Agency Followup Coordinator
General Counsel
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for External Affairs and Environmental Education
Director, Office of Regional Operations
Inspector General
National FOIA Officer, Office of Environmental Information
Audit Followup Coordinator, Office of Environmental Information
Office of the Administrator FOIA Coordinator

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Majority (202) 225-5051
Minority (202) 225-5074

March 25, 2010

The Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

On his first full day in office, President Obama proclaimed his Administration's commitment to openness and transparency by signing a memorandum that urged the federal agencies to adopt a presumption in favor of disclosure in response to Freedom of Information Act (FOIA) requests. The Freedom of Information Act grants the public access to federal agency records unless the requested information is protected by any of nine exemptions or three exclusions. Two recent audits demonstrate that the agencies have failed to implement the President's first-day FOIA guidance to such an extent that we are concerned the records and information of the federal government are no more, and possibly less, available to the public than they were during previous administrations.

President Obama promised taxpayers "a new era of openness in our country" and a presidency built on "transparency and the rule of law."¹ To that end, on January 21, 2009, President Obama issued new guidance on FOIA, via a memorandum to the heads of executive departments and agencies. The President stated that "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."² Additionally, agencies were instructed that "[n]ondisclosure should never be based on an

¹ CNN.com, *Vowing transparency, Obama OKs ethics guidelines*, <http://www.cnn.com/2009/POLITICS/01/21/obama.business/index.html> (last visited March 22, 2010).

² Memorandum for Heads of Executive Departments and Agencies, President, Freedom of Information Act, January 21, 2009, available at http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/

effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.”¹

As directed by President Obama, on March 19, 2009, Attorney General Holder issued a memorandum to the heads of executive departments and agencies to “underscore” the President’s FOIA commitment and “ensure” that it was realized in practice.² The memorandum stressed two points: 1) an agency should not withhold information simply because it may do so legally; and 2) whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure.³ Additionally, presumably to discourage FOIA denials, the Attorney General limited the Department of Justice’s defense of FOIA denials to those that 1) the department reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or 2) disclosure is prohibited by law.⁴

Despite these memoranda stressing the importance of openness and transparency, an audit by the National Security Archive, an open-government project at George Washington University, found that only four agencies have increased the release of information and decreased denials under FOIA, the majority of agencies have not responded to either the Obama or Holder memos with concrete changes in their FOIA practices, and ancient requests still persist in the FOIA system.⁵ Additionally, despite receiving 48,686 fewer FOIA requests in the past fiscal year than in 2008, the number of rejections rose by 154,189.⁶ In direct opposition to Obama’s memorandum, the use of FOIA exception 5, which more than any other exemption protects the personal interests of Government officials, has risen, from 47,395 in fiscal year 2008 to 70,779 in the past fiscal year.⁷

During a March 18, 2010 Subcommittee on Information Policy, Census, and National Archives hearing on current trends in the administration of FOIA, several witnesses expressed frustration with the current climate surrounding FOIA. One witness, a director of a FOIA litigation group, testified that he has observed no improvement since President Obama signed the January 21, 2010 FOIA memorandum: “We [are] unable to discern any real difference between the manner in which the disputed information was handled first under the Bush policy, and later under the Obama policy.”⁸

¹ *Id.*

² Memorandum for Heads of Executive Departments and Agencies, Attorney General, Freedom of Information Act, March 19, 2009.

³ *Id.*

⁴ *Id.*

⁵ Sunshine and Shadows: The Clear Obama Message for Freedom of Information Meets Mixed Results, The National Security Archive, George Washington University, March 15, 2010, available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB308/2010FOIAAudit.pdf>

⁶ Gastongazette.com, *Promises of openness are yet unfulfilled*, <http://www.gastongazette.com/articles/openness-45091-promises-span.html> (last visited March 22, 2010).

⁷ Sharon Theimer, *Promises, Promises: Is Gov’t More Open with Obama?* ASSOC. PRESS, Mar. 16, 2010.

⁸ Written Testimony of Electronic Frontier Foundation Senior Counsel David Sobel, prepared for the H. Oversight and Gov’t Reform Subcommittee on Information Policy, Census, and National Archives hearing on “Administration of the Freedom of Information Act: Current Trends,” Mar. 18, 2010.

Another witness, representing perhaps the most active FOIA requestor and litigator operating today, stated plainly "The Obama administration is less transparent than the Bush administration."⁹

So that we may better understand the failure of the federal agencies to implement the directives of the White House and Justice Department, and to facilitate openness and transparency in the future, we request the following documents:

1. Your agency's complete FOIA log, including the identity of each party that requested records and/or information, the date the request was received, the date the request was fulfilled, whether the request was rejected, and if so, what exemption or exclusion was cited.
2. A complete explanation for each full or partial FOIA rejection since January 21, 2009.
3. All records and communications referring or relating to a full or partial FOIA rejection since January 21, 2009.
4. All records and communications referring or relating to the implementation of President Obama's January 21, 2009, memorandum on the Freedom of Information Act and/or Attorney General Eric Holder's memorandum of March 19, 2009, on the Freedom of Information Act.

We respectfully request that you provide the requested information **no later than Monday, April 26, 2010**. Please note that, for purposes of responding to this request, the terms "records," "communications," and "referring or relating" should be interpreted consistently with the attached Definitions of Terms.

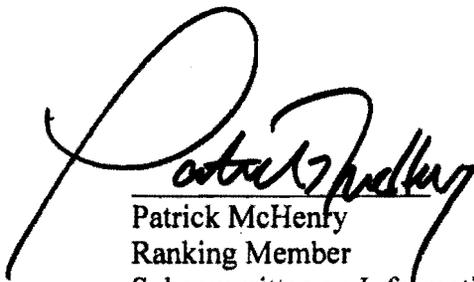
The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, it has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. This broad jurisdiction includes the oversight of Executive Branch operations and administrative functions.

⁹ Written Testimony of Judicial Watch President Tom Fitton, prepared for the H. Oversight and Gov't Reform Subcommittee on Information Policy, Census, and National Archives hearing on "Administration of the Freedom of Information Act: Current Trends," Mar. 18, 2010.

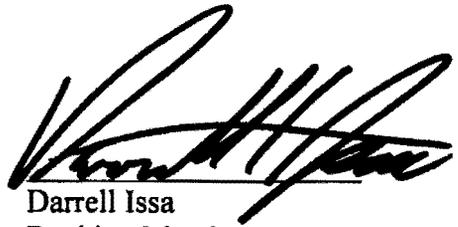
March 25, 2010
Page 4 of 5

If you have any questions or comments please contact Marvin Kaplan or Jonathan Skladany of the Committee staff at (202) 225-5074.

Sincerely,



Patrick McHenry
Ranking Member
Subcommittee on Information Policy,
Census, and National Archives



Darrell Issa
Ranking Member
Committee on Oversight and
Government Reform

Attachment

Definitions of Terms

1. The term "record" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
3. The terms "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 3 2010

OFFICE OF
ENVIRONMENTAL INFORMATION

The Honorable Darrell Issa
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

This is in response to your March 25, 2010, letter to Administrator Jackson seeking information concerning the Environmental Protection Agency's (EPA) Freedom of Information Act (FOIA) program.

When EPA testified before the Committee on Oversight and Government Reform, Subcommittee on Information Policy, Census, and National Archives on March 18, 2010, we provided numerous examples of the Agency's commitment to the letter and spirit of FOIA and Open Government. EPA's National FOIA program has been engaged in an improvement process to ensure greater timeliness, accountability and transparency in processing FOIA requests submitted to the Agency. In the mid-2000's, EPA had over 23,000 unanswered FOIA requests and, according to the White House, two of the oldest overdue requests in the federal government. Agency FOIA professionals, using strong leadership, improved technology, revised procedures and processes, and the support of subject matter experts across the Agency have successfully reduced the number of pending FOIA requests from 23,000 in 2001 to 783 by the end of FY 2008. By the end of FY 2009, EPA reached an all-time low of 317 unanswered FOIA requests with a 53% reduction in FY 2009 alone.

The Annual FOIA Report to the Department of Justice submitted by all Federal agencies indicates that EPA is a leader among its peers in its FOIA processing activities. This leadership position is due in no small part to the commitment of the Agency to meeting both the letter and spirit of FOIA, the Presidential Memoranda and the Attorney General's Guidelines on FOIA.

In embracing the President's mandate for greater transparency, EPA's FOIA staff worked in concert with Agency program representatives to make information publicly available from Agency data bases on EPA's Web sites without the need to file a FOIA request. The result was a reduction in the amount of time to receive Agency records from weeks to seconds. An example of EPA's proactive disclosure of Agency records is demonstrated by the redesign of the Office of Pesticide Program's electronic FOIA reading room where tens of thousands of highly sought after pesticide science and regulatory records are now available to the public on the Web, obviating the need to file a FOIA request. Since making these highly sou46665 ght after records

available on line, FOIA requests for this information have substantially declined. Other parts of the Agency are exploring opportunities to use similar technology to proactively disclose records. The Agency also operates a national FOIA Hotline, staffed by a FOIA Requester Service Center specialist, who answers questions from the public about their requests whether filed at headquarters or in EPA's ten regions and general questions concerning FOIA.

In addition, for the past several years, even prior to the recent FOIA policy change, EPA had already committed to specific FOIA improvement goals in response to E.O. 13392 (<http://www.epa.gov/foia/docs/backlogfy08-10.pdf>). The Agency met all of its FOIA improvement goals ahead of schedule and continues to strive to further improve its FOIA administrative responsibilities.

In response to your request for specific documents, the following enclosures are provided:

- A CD-ROM containing an Excel spreadsheet with over 3000 pages of information from the Agency's FOIA log noting the reason for each full or partial denial, along with a one-page document that summarizes the disposition of the requests received between 01/21/2009 and 04/01/2010 and explains the FOIA exemptions listed under Column 9; and
- A copy of Agency records and communications referring or relating to the implementation of President Obama's memorandum and Attorney General Holder's Guidelines. Additional relevant information will be sent to you from EPA's Office of Inspector General.

If you have further questions, please contact me or your staff may call Tom Dickerson in the Office of Congressional and Intergovernmental Relations on 202-564-3648.

Sincerely,



Linda A. Travers
Acting Assistant Administrator

Enclosures

FOIA Log Summary

Disposition of Requests Received Between 01/21/2009 to 04/01/2010

Total number of requests "Denied in Full"	:	88
Total number of requests "Denied in Part"	:	653
Total number of requests "Granted in Full"	:	4761
Total number of requests with "Other Reasons"	:	6092

The requests that do not have a completed date are still open.

Exemptions

Exemption 1 (b)(1): Classified national defense and foreign relations information.

Exemption 2 (b)(2): Internal agency rules and practices.

Exemption 3 (b)(3): Information that is prohibited from disclosure by another federal law.

Exemption 4 (b)(4): Trade secrets and other confidential business information.

Exemption 5 (b)(5): Inter-agency or intra-agency communications that are protected by legal privileges.

Exemption 6 (b)(6): Information involving matters of personal privacy.

Exemption 7 (b)(7): Records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

Exemption 8 (b)(8): Information relating to the supervision of financial institutions.

Exemption 9 (b)(9): Geological information on wells.

