

## **FREEDOM OF INFORMATION ACT REQUEST**

March 17, 2021

National Highway Traffic Safety Administration  
Executive Secretariat  
1200 New Jersey Avenue, SE  
West Building, 41-304  
Washington, D.C. 20590

**Via Electronic Mail:** NHTSAFOIAPublicliaison@dot.gov

### **Re: FOIA Request - Certain Agency Records (Forms and Waivers)**

Dear Sir or Madam:

On behalf of Energy Policy Advocates, recognized by the Internal Revenue Service as a non-profit public policy institute under § 501(c)(3) of the Internal Revenue Code, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, please provide copies of the following records:

1. OGE Forms 278 and/or 450 in the Agency's possession that were submitted by Ann Carlson on any date from November 8, 2020 through March 17, 2021, inclusive, including any supplements, attachments, corrections or amendments<sup>1</sup>;
2. Any forms seeking an ethics waiver for Ann Carlson submitted on any date from November 8, 2020 through March 17, 2021, inclusive, including any supplements, attachments, corrections or amendments (these include but are not limited to any request to accept income supplementing Ms. Carlson's NHTSA pay);

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<sup>1</sup> These forms are public records. See, e.g., <https://wattsupwiththat.com/2011/11/18/dr-james-hansens-growing-financial-scandal-now-over-a-million-dollars-of-outside-income/>.

3. Any ethics waivers granted Ann Carlson on any date from November 8, 2020 through March 17, 2021, inclusive, including any supplements, attachments, corrections or amendments;
4. Any denials of ethics waivers for Ann Carlson on any date from November 8, 2020 through March 17, 2021, inclusive, including any supplements, attachments, corrections or amendments; and
5. All other financial disclosure and related records, ethics advice and counsel, and/or ethics-related applications, waivers and/or approvals pertaining to Ann Carlson and dated on any date from November 8, 2020 through March 17, 2021, inclusive (these include but are not limited to any request to accept income supplementing Ms. Carlson's NHTSA pay).

#### **Request for Fee Waiver**

We request the National Highway Traffic Safety Administration waive or substantially reduce any fees associated with this request. **Our request for fee waiver is in the alternative, first for reasons of significant public interest, and second, on the basis of the Energy Policy Advocates' status as a media outlet.** We do not seek the information for a commercial purpose. Energy Policy Advocates is organized and recognized by the Internal Revenue Service as a 501(c)3 educational organization. It actively publishes and broadly disseminates public records pertaining to energy and environmental policymaking. The requester has no commercial interest possible in these records.

The below clearly demonstrates that:

The requested information is of widespread public, media and legislative interest.

Requester is a non-profit classified as such by the Internal Revenue Service.

Requester does not seek these records for a commercial purpose and has no commercial interest possible in these records.

**1. The Requester intends to broadly disseminate the information requested.**

The Requester has both the intent and the ability to convey any information obtained through this request to the public. Energy Policy Advocates publishes its finding regularly through the organization's website, [www.epadvocates.org](http://www.epadvocates.org). This work is frequently cited in newspapers and trade and political publications. Requester intends to broadly disseminate public information obtained under this FOIA as it has other information relevant to its mission and work.

**2. Disclosure is "likely to contribute" to an understanding of specific government operations or activities because the releasable material will be meaningfully informative in relation to the subject matter of the request.**

The requested records, if they exist, pertain to the corporate disclosure of climate risks, which are of major media, public and policy interest. Any records responsive to this request therefore are likely to have an informative value and are "likely to contribute to an understanding of Federal government operations or activities". We note Ms. Carlson's appointment has been the subject of media coverage and promotional efforts seeking media attention<sup>2</sup>.

**3. The disclosure will contribute to the understanding of the public at large, as opposed to merely that of the requester or a narrow segment of interested persons.**

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<sup>2</sup> See, e.g., <https://insideclimatenews.org/news/09032021/federal-courts-biden-trump-environmental-climate-policy/> and <https://fullertonobserver.com/2021/01/25/native-fullertonian-goes-to-washington/>, <https://legal-planet.org/2021/01/26/legal-planteteer-ann-carlson-joins-biden-administration/> and <https://law.ucla.edu/news/carlson-joins-nhtsa-chief-counsel>.

Energy Policy Advocates is dedicated to and has a documented record of promoting the public interest, advocating sensible policies to protect human health and the environment, broadly disseminating information relevant to the policy issues on which its experts work. With a demonstrated interest and record in the relevant policy debates and expertise in the subject of energy- and environment-related regulatory policies, Energy Policy Advocates unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of the “public at-large.”

**4. The disclosure will contribute “significantly” to public understanding of government operations or activities.**

The Requester repeats and incorporates here by reference the arguments above from the discussion of how disclosure is “likely to contribute” to an understanding of specific government operations or activities.

The Requester has stated “with reasonable specificity that its request pertains to operations of the government,” and that it intends to broadly disseminate responsive records. Therefore, **Energy Policy Advocates first seeks waiver of any fees** under FOIA on the above significant public interest basis. Disclosure of records responsive to this request will contribute “significantly” to public understanding of government operations or activities. 5 U.S.C. § 552(a) (4)(A)(iii) (“Documents shall be furnished without any charge...if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester”).

**In the alternative**, Energy Policy Advocates requests a waiver or reduction of fees as a representative of the news media. The provisions for determining whether a requesting party is a representative of the news media, and the “significant public interest” provision, are not mutually exclusive. As Energy Policy Advocates is a non-commercial requester, it is entitled to liberal construction of the fee waiver standards. 5 U.S.C.S. § 552(a)(4)(A)(iii), *Perkins v. U.S. Department of Veterans Affairs*, 754 F.Supp.2d. 1 (D.D.C. 2010). Alternately and only in the event the Administration refuses to waive our fees under the “significant public interest” test, which Requester would then appeal while requesting the Administration proceed with processing on the grounds that Energy Policy Advocates is a media organization, a designation the federal government has acknowledged for the purposes of FOIA.<sup>3</sup> Requester asks for a waiver or limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by.... a representative of the news media...”).

**The Administration must address both of these requests for fee waiver in the event it denies one; failure to do so is *prima facie* arbitrary and capricious.**

Energy Policy Advocates looks forward to your response. In the event you have any questions, please feel free to contact me at [ncornettlaw@gmail.com](mailto:ncornettlaw@gmail.com).

Sincerely,  
Neal Cornett  
Attorney at Law

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<sup>3</sup> See, e.g., Securities & Exchange Commission Request No. 21-00769-FOIA.