



WHERE ENERGY, ENVIRONMENT, AND TRUTH MEET

FREEDOM OF INFORMATION ACT REQUEST

May 14, 2021

U.S. Department of Energy
NNSA FOIA Requester Service Center

Via Electronic Mail: Foiaofficer@nnsa.for.gov

Re: Certain Department correspondence

Dear Sir or Madam:

On behalf of Energy Policy Advocates (“EPA”), recognized by the Internal Revenue Service as a non-profit public policy institute under § 501(c)(3) of the Internal Revenue Code, and pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq., I request copies of the following records, the significant public interest in which is set forth on pp. 7-11, *infra*:

1. all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, *infra*), including also any attachments, a) sent to or from or which copies (whether as cc: or bcc:) Ben Santer that, b) was also sent to or from or which copies (again whether as cc: or bcc:) i) Paul Hanle, whether at hanle@eli.org or any other email address, ii) Joellen Russell, and/or iii) Don Wuebbles, and c) is dated from January 1, 2021 through the date you process this request, inclusive; and

2. all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, *infra*), including also any attachments, a) sent to or from or which copies (whether as cc: or bcc:) Ben Santer that, b) includes, *anywhere*, whether in an email address, in the sent, to, from, cc, bcc fields, or the subject fields or body of an email or email “thread”, including also in any attachments, “**Judicial Center**” (quotation marks merely indicate search term), and c) is dated from January 1, 2021 through the date you process this request, inclusive.

We request entire “threads” of which any responsive electronic correspondence is a part, regardless whether any portion falls outside of the above time parameter.

Please consider as non-responsive all published or docketed materials, including pleadings, regulatory comments, ECF notices, news articles, and/or newsletters, unless forwarded to or from the named persons with substantive commentary added by the sender.

As noted earlier in this request, EPA is a non-profit public policy organization dedicated to informing the public of developments in the area of energy and environmental issues and relationships between governmental and non-governmental entities as they relate to those issues. EPA’s ability to obtain fee waivers is essential to this work. EPA intends to use any responsive information to continue its work highlighting the nexus between interested non-governmental entities and government Department decision-making. The public is both interested in and entitled to know how regulatory, policy and enforcement decisions are reached. EPA ensures the public is made aware of its work and findings via media, its website epadvocates.org, its collaboration with the non-profit public interest law firm Government Accountability & Oversight, P.C., and its counsel's ClimateLitigationWatch.org project dedicated to broadly

disseminating energy and environmental policy news and developments. The public information obtained by EPA has been relied upon by established media outlets, including trade press, the Washington Times, Wall Street Journal, and Wall Street Journal editorial page.¹

Energy Policy Advocates requests records on your system, e.g., its backend logs, and does not seek only those records which survive on an employee's own machine or account.

This request is not meant to exclude any other record(s) or part(s) thereof that, although not specifically requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under the FOIA unless the Department reasonably believes release of the information will harm an interest that is protected by the exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

Should you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

¹ See, e.g., EPA In the News at <http://epadvocates.org/news/>; see also, e.g., Stuart Parker, "Conservative Group Says States' Ozone Suit 'Trojan Horse' for GHG Limits," Inside EPA, February 24, 2021, Editorial, *Wall Street Journal*, "Biden's 'BackDoor' Climate Plan," March 17, 2021, <https://www.wsj.com/articles/bidens-backdoor-climate-plan-11616020338>, Timothy Puko, "States Explored Litigation to Challenge U.S. Policy on Climate Change," *Wall Street Journal*, November 28, 2020, <https://www.wsj.com/articles/states-explored-litigation-to-challenge-u-s-policy-on-climate-change-11606559400>, and Stuart Parker, "Conservative Group Says States' Ozone Suit 'Trojan Horse' for GHG Limits," Inside EPA, February 24, 2021 (last accessed April 8, 2021).

1. Basic factual material about each withheld record, including the originator, recipients, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you should seek to withhold or redact any responsive records or parts thereof, we request that you: (1) identify each such record with specificity (including date, author, recipient, and parties copied); (2) explain in full the basis for withholding responsive material; and (3) provide all segregable portions of the records for which you claim a specific exemption. 5 U.S.C. § 552(b). Please correlate any redactions with specific exemptions under FOIA.

EPA is willing to receive records on a rolling basis.

Format of Requested Records

Under FOIA, you are obligated to provide records in a readily accessible electronic format and in the format requested. See, *e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). “Readily accessible” means text-searchable and OCR-formatted. See 5 U.S.C. § 552(a)(3)(B).

We seek responsive records in their native form, with specific reference to the U.S. Securities and Exchange Commission Data Delivery Standards. The covered information we seek is electronic information, this includes electronic *records*, and other public *information*.

To quote the SEC Data Delivery Standards, “Electronic files must be produced in their native format, *i.e.*, the format in which they are ordinarily used and maintained during the normal

course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. *(Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.)*” (emphases in original).

In many native-format productions, certain public information remains contained in the record (e.g., metadata). Under the same standards, to ensure production of all information requested, if your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production.

Native file productions may be produced without load files. However, native file productions must maintain the integrity of the original meta data, and must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. A separate folder should be provided for each custodian.

In the event that necessity requires your office to produce a PDF file, due to your normal program for redacting certain information and such that native files cannot be produced as they are maintained in the normal course of business, in order to provide all requested information each PDF file should be produced in separate folders named by the custodian, *and* accompanied by a load file to ensure the requested information appropriate for that discrete record is associated with that record. The required fields and format of the data to be provided within the load file can be found in Addendum A of the above-cited SEC Data Standards. All produced PDFs must be text searchable.

We appreciate the inclusion of an index.

Fee Waiver 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.

The Department 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.

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as EPA access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups." *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information" 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

I. EPA Qualifies for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The Department of Energy's FOIA regulations affirm the same standard. 10 CFR § 1004.2(m).

First, as explained herein, the federal government acknowledges EPA's status as a media requester. Further, in the alternative, the Department must consider four factors to determine whether a request is in the public interest: if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure is not primarily in the commercial interest of the requester. 10 C.F.R. § 1004.9(a)(8). As shown below, the request and requester meet both of these factors.

Regardless, EPA agrees to pay up to \$250 to continue with processing in the event DoE denies our fee waiver request, which we will pay under protest and appeal while DoE proceeds.

A. The Subject of This Request Concerns “The Operations and Activities of the Government.”

The subject matter of this request concerns the operations and activities of the Department. This request asks for correspondence pertaining to the participation in a unique event co-hosted by the Federal Judicial Center on February 24-25, 2021² in which LLNL's Ben Santer participated that, the record suggests, is part of a privately financed effort to supplement

² <https://www.nationalacademies.org/event/02-24-2021/emerging-areas-of-science-engineering-and-medicine-for-the-courts-identifying-chapters-for-a-fourth-edition-of-the-reference-manual-on-scientific-evidence-virtual-workshop>.

the plaintiffs' tort bar in the wave of "climate" litigation flooding courts across the country. Specifically, and protestations of "providing such knowledge impartially and without ideological tilt"³ notwithstanding, this is to present a cabined view, indeed the plaintiffs' case on climate science "to judges who will be deciding these cases."⁴

We see that "The Federal Judicial Center Foundation is authorized to accept gifts to support Center programs" (<https://www.fjc.gov/about>), and that discrete programs are often specifically paid for by outside foundations. (See, e.g., <https://www.fjc.gov/education/programs-and-resources-judges>, <https://www.fjcfoundation.org>⁵). We see that for the year preceding the event at the core of this request, FJC only cited one private, activist group-funded event, also a "seminar on climate science." <https://www.fjcfoundation.org/page/reports>. The year before that,

³ <https://www.eli.org/vibrant-environment-blog/educating-judges-climate-litigation-today-and-tomorrow>

⁴ <https://www.eli.org/judicial-education/recent-ongoing-upcoming-projects>. Viewed May 14, 2021.

⁵ See also, "The Board, however, acting primarily through its chair, will inform potential donors about the FJCF and the Federal Judicial Center (FJC) and its work. In this regard, Center staff should inform the Board of projects in which outside donors might have an interest and provide, to the degree practicable, the information listed in § 2.a.2.e, infra...2) The Board regards the following as helpful but non-binding, non-exclusive factors to consider in assessing whether gifts would, or would appear to, compromise of judicial branch or Judicial Center integrity and independence....e) The following factual attributes of potential donors ...2. The existence of any pending major litigation before any federal court, including the nature of the claims raised and the status of the action;" <https://www.fjc.gov/fjcfoundation/procedures.html> (described as "For a more complete description of factors the Board considers in deciding whether to accept a gift, see the [guidelines](#) adopted by the Board." <https://www.fjc.gov/fjcfoundation/information.html>) As there clearly is and in those years has been a spate of such major litigation before the courts — surely the reason that this use of FJC to reach the judiciary has escalated — this is of particular public interest. See, e.g., "In the US and around the world, there is a growing tide of litigation on climate mitigation and adaptation, climate regulation, and climate accountability matters. Judges, generalists who rarely have a background in science, are the gatekeepers of scientific evidence and in many cases the finders of fact. The Climate Judiciary Project provides the information and training needed to meet judges' need for a basic familiarity with current climate science to keep pace with the climate issues emerging in courtrooms and the law." <https://www.eli.org/judicial-education>. See also, "Over the last several years, the number of lawsuits related to effects of climate change has grown from a few major cases about a decade ago to scores of cases ranging from tort-based actions to challenges to administrative decisions within which climate implications are imbedded." <https://www.eli.org/vibrant-environment-blog/educating-judges-climate-litigation-today-and-tomorrow>.

2019, the same activist organization, Environmental Law Institute (ELI), “paid the travel expenses for judges to attend four programs on climate science.” These four events were out of seven listed events that year, total. The February event followed on those and, given FJC’s otherwise limited calendar of such privately financed events, suggests an escalated use of the institution to attempt to influence the courts on a matter now flooding the judiciary, “climate” litigation, including through the use of officials at other public institutions (including Mr. Santer).

The chronology relevant to these events adds to the obvious public interest: leaving it to individual judges to afford both sides to introduce the court to the issue — not taking a tutorial solely advocating the position favored by Mr. Santer and, again protestations notwithstanding, the Environmental Law Institute — has not worked out for proponents of the agenda Mr. Santer so closely aligns himself with using his taxpayer-funded position. (See *City of Oakland et al. v. BP p.l.c., et al.* (17-cv-06011), in which Federal Judge William Alsup (N.D. CA) removed the plaintiffs’ “climate” nuisance case to federal court and, after holding a day-long tutorial affording both sides to make their case,⁶ ruled in July 2018 that there is no federal cause of action, dismissing the plaintiffs’ suit.⁷ That case is now the subject of a petition for certiorari before the United States Supreme Court.)

After this, ELI organized and financed a spate of FJC-cosponsored “workshops” placing before federal judges a rather more controlled presentation on the dispute, in which Mr. Santer

⁶ See, e.g., Myles Allen, “The Alsup Aftermath,” RealClimate.org, April 25, 2018, <https://www.realclimate.org/index.php/archives/2018/04/the-alsup-aftermath/>.

⁷ Opinion available at https://eidclimate.org/wp-content/uploads/2018/07/SF.Oak_Alsup-Order-Granting-Dismissal-on-PJ-charges.pdf.

has now participated as a federal official (which his PDF presentation confirms). A review of these presentations shows the group is presenting to judges the “plaintiffs’ case”, not the effort reflective of “practitioners and organizations on all sides of the political spectrum” or “providing such knowledge impartially and without ideological tilt” its financier went to such pains to proclaim when posting an explanation for its efforts.⁸ The seminars are funded, prepared, and staffed by activists, who present one side of a key issue before the courts. The agendas and ELI proclamations do indeed appear as being innocuous until one reads the faculty bragging about how biased they are. For example, “Santer says that during his NAS briefing, he specifically referred to the nuisance cases, which seek to recover damages from oil majors for their climate liability as well as for misleading shareholders over the risks of climate change...Santer acknowledges he is not a neutral observer in the debate and believes fossil fuel companies should be held accountable. He adds that attribution science has advanced enough ‘to pinpoint a company’s contribution . . . and assign liability based on their total contributions.’”⁹ (ellipses in original) An examination of this most recent panel affirms the program’s bent toward presenting for judges the views of outwardly and often aggressively ‘partisan’ advocates (Santer, Wuebbles), the other presenters being a presenter whose university bio states, *inter alia*, “Prof. Russell is one of the 14 scientists behind an amicus curiae brief supporting the plaintiff in the historic 2007 U.S. Supreme Court decision on carbon dioxide emissions and climate change,

⁸ <https://www.eli.org/vibrant-environment-blog/educating-judges-climate-litigation-today-and-tomorrow>

⁹ Dawn Reeves, “DOE Scientist Begins Briefing Federal Judges On Climate Attribution,” Inside EPA, May 10, 2021.

Commonwealth of Massachusetts, et al. v. U.S. Environmental Protection Agency”¹⁰, and an academic affiliated with several openly activist groups. Again, not what is advertised.

What is further interesting about these seminars is that they appear to represent — along with, *inter alia*, charitable grants to the lead plaintiffs’ tort firm in the “climate” lawsuits,¹¹ and donor funding of universities to provide faculty to support the same firm¹², which also then places academics on retainer¹³ — a vehicle for private activist donors to supplement the climate litigation industry. We do note that the party financing these “workshops” to present to federal

¹⁰ <https://profiles.arizona.edu/person/jrussell>. Viewed May 14, 2021.

¹¹ One charitable foundation, Resource Legacy Fund, has made “grants” of nearly three million dollars in just three years (2017-2018) directly to the private tort law firm leading the climate litigation campaign, Sher Edling, LLP. IRS filings show grants totaling about one and three-quarter million dollars in just two years to that tort firm leading this industry, the one that has Profs. Carlson and Burger on its team, Sher Edling, LLP. Styled each year as “land or marine conservation” (\$432,129 (2017) <https://climatelitigationwatch.org/wp-content/uploads/2019/11/RLF-2017-990.pdf>), “advancing healthy communities (\$1,319,625 (2018) <https://climatelitigationwatch.org/wp-content/uploads/2020/12/RLF-IRS-Final-990-12.31.18-Public-Copy-4829-6612-8044.pdf>), “Land or Marine Conservation, Promotion of Education and/or Healthy Communities (\$1,110,000 (2019) <https://tinyurl.com/28y8pjpz>), the most reasonable explanation for this is that the foundation is underwriting the firm’s aggressive pursuit of climate litigation, for which it also has lucrative contingency fee agreements under which the plaintiffs’ tort law firms receive a sliding scale of tens of millions of dollars on each tranche of hundreds of millions expected in any verdict or settlement. For example, the San Francisco agreement with the law firm Sher Edling LLP (<https://climatelitigationwatch.org/contract-reveals-climate-industry-attorneys-face-massive-windfall/>) sets forth that a settlement or verdict of \$100 million just for that city would yield the lawyers \$25 million, which goes to \$32.5 million for a settlement or verdict of \$150 million, \$36.25 million out of \$200 million, and so on. Boulder, Colorado has agreed to pay 20% of its haul to the lawyers. Minnesota agreed to pay Sher Edling “16.67% of the first \$150 million recovered, and 7.5% for any portion greater than \$150 million.” <https://govoversight.org/wp-content/uploads/2021/01/AGO-LAC.pdf>.

¹² See, e.g., <https://climatelitigationwatch.org/activists-academics-plan-legal-assaults-with-a-bunch-of-state-and-local-prosecutors-nationwide/>. See also <https://climatelitigationwatch.org/wp-content/uploads/2021/03/Carlson-Discretionary-Fund-Explainer-thread.pdf>.

¹³ See, e.g., William Allison, “Bombshell: Naomi Oreskes On Retainer With Plaintiffs’ Law Firm”, Energy in Depth, May 13, 2021, <https://eidclimate.org/bombshell-naomi-oreskes-on-retainer-with-plaintiffs-law-firm/>, citing to, *inter alia*, <https://www.cnn.com/2021/05/13/business/exxon-climate-change-harvard/index.html>, “The company said Naomi Oreskes, one of the main authors of the study, is on retainer with a law firm that is leading lawsuits against Exxon and others in the industry. Exxon called this a ‘blatant conflict of interest.’ Oreskes was not immediately available for comment.”.

judges a particular point of view on “climate science” — Environmental Law Institute — has a Board populated by activists in the field, and a leading member of its governance team at the time of these events was one of those same donor-funded professors who, also at the same time all of these events were arranged for, also served on the same tort law firm’s team.¹⁴

However permissible, the participation by a senior federal official in efforts by the climate litigation industry and/or the broad array of interests supporting it is of great public interest.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

For these reasons any responsive records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow EPA to convey to the public information about Mr. Santer’s participation in a campaign to advance as “unbiased” a hotly-contested position before federal judges, afforded such opportunities as a result of his position. Once the information is made available, EPA will analyze it and present it to its followers and the general public in a manner that will meaningfully enhance the public’s understanding of this topic.

¹⁴ UCLA Law Professor and Director of the Emmett Institute on Climate Change and the Environment at UCLA School of Law, Ann Carlson, was in late January “appointed by the Biden administration to serve as the chief counsel for the National Highway Traffic Safety Administration. The agency is in charge of climate standards for cars and trucks, which is why they have recruited me for the position.” <https://climatelitigationwatch.org/wp-content/uploads/2021/05/A.Carlson-Leave-Records-21-8782.pdf>. Carlson also served during this period as a consultant to Sher Edling, LLP, while also serving on ELI’s Board and governance committee. <https://climatelitigationwatch.org/wp-content/uploads/2021/03/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf>.

Thus, the requested records are likely to contribute to an understanding of Department operations and activities.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons' Understanding of the Official Activities Briefing Judicial Officers as a Career Official at the Department of Energy.

For reasons already described, the requested records will contribute to public understanding of , and EPA will use the information it obtains from the disclosed records to educate the public at large about, this participation by a senior federal official in an activist campaign. *See W. Watersheds Proj. v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) (“... find[ing] that WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how ... management strategies employed by the BLM may adversely affect the environment.”). Through EPA’s synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep’t of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), cert. denied, 513 U.S. 823 (1994) (applying “public” to require a sufficient “breadth of benefit” beyond the requester’s own interests); *Cnty. Legal Servs. v. Dep’t of Hous. & Urban Dev.*, 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester’s “work by its nature is unlikely to reach a very general audience,” “there is a segment of the public that is interested in its work”).

Indeed, the public does not currently have an ability to easily evaluate the requested records. We are also unaware of any previous release to the public of these or similar records, only Mr. Santer’s presentation, “Evidence for the Courts.” See *Cnty. Legal Servs. v. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records “clarify important facts” about agency policy, “the CLS request would likely shed light on information that is new to the interested public.”). As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations....”

Disclosure of these records is not only “likely to contribute,” but is certain to contribute, to public understanding of what was behind the presentation by a senior official to judges who may in the future be asked to opine on issues of great importance to the taxpayer and the economy.

The public is always well served when it knows how the government conducts its activities. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about this event presenting a “lawyer’s brief” of one side of a central issue in “particular matters” proliferating in the courts, despite being pitched as well-rounded and as part of an aggressive expansion of the use of such seminars — seminars of the sort that one side of the ideological divide previously found to be troubling even when limited to broadly thematic presentations such as capitalism’s virtues and the moral basis of a free society.¹⁵

¹⁵ See, e.g., <https://publicintegrity.org/politics/corporations-pro-business-nonprofits-foot-bill-for-judicial-seminars/>; “A Conservative Agenda Unleashed on the Federal Courts”, Rebecca R. Ruiz, Robert Gebeloff, Stever Eder and Ben Protess, Published March 14, 2020, Updated March 16, 2020 <https://www.nytimes.com/2020/03/14/us/trump-appeals-court-judges.html>.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

EPA is not requesting these records merely for their intrinsic informational value.

Disclosure of the requested records will significantly enhance the public's understanding of the Department's involvement with "the number of lawsuits related to effects of climate change ... scores of cases ranging from tort-based actions to challenges to administrative decisions within which climate implications are imbedded." (See, *supra*) Such public oversight of Department action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, EPA meets this factor as well.

II. EPA has the Ability to Disseminate the Requested Information Broadly.

EPA is dedicated to obtaining and disseminating information relating to energy and environmental public policy, which is a key component of its this mission for which it has both the intent and the ability to convey any information obtained through this request to the public. Energy Policy Advocates publishes its findings regularly through the organization's website, www.epadvocates.org. As already demonstrated, this work is frequently cited in newspapers and trade and political publications. EPA intends to publish information from requested records on its website, distribute the records and expert analysis to its followers through social media platforms.

Through these means, EPA ensures: (1) that the information requested contributes significantly to the public's understanding of the government's operations or activities; (2) that the information enhances the public's understanding to a greater degree than currently exists; (3) that EPA possesses the expertise to explain the requested information to the public; (4) that EPA

possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes EPA as a reliable source in the field of government officials' conduct.

In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). EPA need not show how it intends to distribute the information, because “[n]othing in FOIA, the [Department] regulation, or our case law require[s] such pointless specificity.” *Judicial Watch*, 326 F.3d at 1314. It is sufficient for EPA to show how it distributes information to the public generally. *Id.*

III. Obtaining the Requested Records is of No Commercial Interest to the Requester.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to EPA's role of educating the general public. EPA is a 501(c)(3) nonprofit public policy institute dedicated to transparency in public energy and environmental policy. Due to its nonprofit mission, EPA has no commercial interest and will realize no commercial benefit from the release of the requested records.

Expedited Processing

Given the importance of the issue of such active issue-advocates as Mr. Santer assisting a cabined briefing of federal judges on the presenters' shared perspective in such economically meaningful litigation as the suite of “climate” lawsuits proliferating across the country — particularly one in a series seemingly instigated after a judge-ordered briefing by both sides in the dispute failed to turn out as these advocates had hoped — EPA requests expedited processing.

Expedited processing of requests requires a “compelling need”, a need that can be demonstrated by “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” 10 C.F.R. § § 1004.5(d)(6). The regulation requires a requester show both an “urgency to inform” and that the requester is “primarily engaged in disseminating information to the public.”

We begin by noting the aforementioned news report that prompted this request, headlined “DOE Scientist Begins Briefing Federal Judges On Climate Attribution.” As stated in the fee waiver discussion, *supra*, EPA is “primarily engaged in disseminating information to the public.” EPA regularly disseminates records obtained on social media and its website and records obtained by EPA have provided essential background for work produced by a newspaper of record and energy industry publications. Finally, EPA has received prior recognition as a media requester for FOIA purposes.¹⁶

There is a petition for certiorari in one of the cases relevant to this matter currently pending before the United States Supreme Court, which also is expected to issue an opinion in another case, There is an “urgency to inform” the public of the information requested as it relates to potential conflicts of interest of a senior USEPA official concerning matters that may fundamentally reshape the American economy. USEPA generally, and the Office of Air and Radiation, specifically, will be primarily responsible for ensuring the Biden Administration’s Earth Day announcement of a promised fifty percent reduction in carbon emissions in a decade is

¹⁶ See, e.g., Securities & Exchange Commission Request No. 21-00769-FOIA; Department of the Interior Request No. DOI-OS-2021-003335.

met. Conflicts of interest within USEPA are therefore a matter of which there is an “urgency to inform”.

Finally, we reiterate that our fee waiver requests are phrased in the alternative.

Conclusion

For all of the foregoing reasons, EPA qualifies for expedited processing and a full fee waiver. We hope that the Department will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays. It seems highly unlikely that the universe of potentially responsive records is voluminous.

If you have any questions, please contact me at the below email address. All records and any related correspondence should be sent to my attention at the address below.

We look forward to your response. If you have any questions, do not hesitate to contact me by email at Schilling@allhookedup.com.

Sincerely,
Rob Schilling
Executive Director
Energy Policy Advocates