



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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The Honorable David Vitter
Ranking Minority Member
Committee on Environment and
Public Works
United States Senate
Washington, DC 20510

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government
Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Vitter, Senator Grassley and Chairman Issa:

This responds to your letter to the Attorney General dated March 7, 2013, which expressed your concerns about the way in which the Freedom of Information Act (FOIA) is being administered at the Environmental Protection Agency (EPA). You asked that the Department of Justice look into the matter. We apologize for the delay in this response.

As you know, the Department takes its leadership role in FOIA very seriously. The FOIA Guidelines issued by the Attorney General in March 2009 are intended to guide all agencies' implementation of the FOIA. Those FOIA Guidelines direct agencies to apply a presumption of openness in administering the FOIA, to make it a priority to respond to requests in a timely way, to remove "bureaucratic hurdles" and to work cooperatively with requesters.

After receipt of your letter, our Director of the Office of Information Policy, which is the office within the Department charged with the responsibility for encouraging and overseeing agency FOIA compliance, reached out to EPA's Chief FOIA Officer. On April 9, 2013, the Director of OIP met personally with EPA's Chief FOIA Officer, their Principal Deputy Assistant Administrator, and others to discuss the concerns raised in your letter and FOIA administration at EPA more generally. At that meeting, OIP's Director emphasized the importance of applying the FOIA's core requirements and the need to maintain focus on the fundamentals of FOIA administration as directed by President Obama and Attorney General Holder.

DOJ conducts extensive training programs for all government personnel, issues written guidance on application of the Attorney General's FOIA Guidelines and proper application of

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the FOIA's procedural and substantive requirements, and provides individualized counseling services to agency personnel on any issue relating to the FOIA and its proper implementation. This training and guidance includes the importance of timely responses and good communication with requesters and proper application of the FOIA's fee provisions.

Since 2009, some EPA personnel have attended various OIP FOIA training courses. OIP was also asked to provide a lecture at a FOIA conference held by EPA in 2012. At the meeting with EPA's Chief FOIA Officer, OIP offered to conduct in-depth, specialized training specifically for EPA, including training by video to reach field personnel. This training would include sessions on the FOIA's fee provisions, including the limitations on charging fees as a result of the OPEN Government Act amendments to the FOIA, the importance of good communication with requesters, the focus on responding to requests promptly and improving response times. EPA readily accepted this offer of training and is working to schedule it for the fourth quarter of this fiscal year. OIP also suggested that EPA remind its FOIA staff of the many other resources that OIP makes available to agency personnel to assist them in their administration of the FOIA, such as its published *Guide to the FOIA* and the availability of its FOIA counselors who can provide individualized advice, and EPA agreed to do so.

In response to the concerns raised in your letter, EPA advised OIP that they have taken a number of steps. Specifically, EPA has devised a plan to significantly increase training on the FOIA across the agency and to institute measures to provide for enhanced accountability for FOIA processing. The Principal Deputy Assistant Administrator and Deputy Chief FOIA Officer have reached out to officials in Region 6, as well as in the Office of General Counsel (OGC) to discuss the concerns raised in your letter and to reiterate the assistance available to them from a variety of sources. EPA has attorneys in each region to advise regional personnel on FOIA requirements. Headquarters staff is also available to assist with questions and they hold a monthly call with the regions and proactively convey that they are available to answer questions and be a resource.

EPA further advised that it encourages communication with requesters to be sure that there is a mutual understanding of what is being requested. If a request is broad, they work with the requester to narrow it so as to be able to respond more quickly. EPA recognizes that workloads impact timeliness. They are focusing on their ten oldest requests and will implement quarterly reporting to bring greater awareness to these oldest requests. Region 6 receives many of the agency's large, complex requests. They have made improvements in their processing times and EPA will institute enhanced reporting metrics to improve accountability.

EPA conducted a more recent review of its FOIA program which revealed that renewed commitment to its FOIA action plan was needed. The Acting Administrator charged the Assistant Administrator for the Office of Environmental Information with revising EPA's FOIA regulations; issuing revised FOIA policies and procedures; providing mandatory, in-depth

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training of FOIA coordinators, officers, employees, and managers; providing training to all EPA staff, and establishing an implementation schedule for all recommendations made by the workgroup. All of these initiatives are designed to improve FOIA administration at EPA and should alleviate the issues referenced in your letter. In addition to this and more recently, the Acting Administrator has asked the EPA's Office of Inspector General (OIG) to conduct a management and programmatic audit of EPA's FOIA fee waiver process. Specifically, the request of the OIG was to assess whether the fees waiver factors were applied in a manner that adhered to the Agency's policy of timely and unbiased treatment of fee-waiver requests. The request does also ask the OIG to provide input as to how EPA could enhance the accountability and tracking of its fee waiver process.

OIP will continue to monitor EPA's administration of the FOIA and will continue to be a legal and policy resource for the FOIA staff. After conducting specialized FOIA training programs for EPA this year, including video training for personnel in the regions, OIP will remain available to EPA to regularly provide up-to-date training on any issue connected with proper administration of the FOIA.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik
Principal Deputy Assistant Attorney General

cc: The Honorable Barbara Boxer
Chairman
Senate Committee on Environment and Public Works

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary

The Honorable Elijah Cummings
Ranking Minority Member
House Committee on Oversight and Government Reform