

EXHIBIT A-1



SOUTHEASTERN LEGAL FOUNDATION, INC.

6100 LAKE FORREST DRIVE, N.W. • SUITE 520 • ATLANTA, GEORGIA 30328
(404) 257-9667 • FAX (404) 257-0049

December 18, 2009

VIA CERTIFIED MAIL

Item No.: 7003 2260 0005 4600 6573

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
E-mail: hq.foia@epa.gov

Re: Freedom of Information Act Request

Dear FOIA Compliance Officer,

Southeastern Legal Foundation (“SLF”) is a non-profit public interest law firm specializing in the practice of constitutional law. SLF also undertakes research on policy issues of interest to the public. Currently, SLF is engaged in an inquiry into the Environmental Protection Agency (“EPA”) and the Endangerment Findings, described and defined below. Pursuant to our investigation, we request that you provide us with any documents including, but not limited to:

1. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the timing of the following (hereinafter collectively “Endangerment Findings”) released by the EPA on December 7, 2009:
 - a. Endangerment Finding: The Administrator finds that the current and projected concentrations of the six key well-mixed greenhouse gases--carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)--in the atmosphere threaten the public health and welfare of current and future generations; and
 - b. Cause or Contribute Finding: The Administrator finds that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution which threatens public health and welfare.

This inquiry is meant to cover, but is not limited to any discussions about coinciding the Endangerment Findings with the “United Nations Climate Change Conference” held December 7, 2009 through December 18, 2009 in Copenhagen, Denmark.

National Freedom of Information Officer

December 18, 2009

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2. Written and electronic correspondence, memoranda, data, or reports received produced by any employee, agent, or consultant of the EPA discussing the public comments (excluding the publicly available comments themselves) made before, and related to, the Endangerment Findings. This inquiry is meant to cover, but is not limited to any reports or analysis produced or ordered by the EPA in response to any public comment related to the Endangerment Findings;
3. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses or analyzes the financial implications or consequences of the Endangerment Findings. This inquiry is meant to cover, but is not limited to the financial implications of the Endangerment Findings on the following: (i.) the private sector in the United States or on any particular industry; (ii.) the United States government or any agency or political subdivision thereof; or (iii.) on state and local governments. This inquiry is also meant to cover any reports or analysis produced for the EPA by any other federal agency or subdivision of the United States federal government, including but not limited to, the Office of Management and Budget and the Congressional Budget Office.

This request for documents is made pursuant to the Freedom of Information Act, 5 U.S.C. § 552. We request that the documents be furnished without charge, or at reduced charges, pursuant to 15 CFR § 4.11(k), since this information is in the public interest, is likely to contribute to public understanding of the operations and activities of government, and because SLF has no commercial interest in requesting the information. If any charges are applied for the furnishing of these documents, please advise whether the costs will exceed Fifty Dollars (\$50 USD).

If you deny all or any part of this request, please cite each specific exemption you think justifies your withholding of information, and include notification of appeal procedures available under the law. If you have any questions about handling this request, you may reach me at the telephone number listed below.

Sincerely,



Shannon L. Goessling
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.
6100 Lake Forrest Drive, Suite 520
Atlanta, GA 30328
(800) 474 - 8313

EXHIBIT A-2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

December 22, 2009

Ms. Shannon L. Goessling
Southeastern Legal Foundation, Inc.
6100 Lake Forrest Drive, Suite 520
Atlanta, GA 30328

RE: Request No: HQ-FOI-00469-10

Dear Ms. Goessling,

This is to acknowledge receipt of your Freedom of Information Act (FOIA), 5 U.S.C. 552, request dated December 18, 2009 and received in this office on December 22, 2009, for records related to:

copy of records regarding the Endangerment Findings released by the US EPA on December 7, 2009

Your request has been forwarded to OAR for processing. If you have any questions, please contact the Requester Service Center at 202-566-1667 or by email at hq.foia@epa.gov. Please provide your FOIA request number in all communications.

Sincerely,

Larry F. Gottesman
National FOIA Officer

EXHIBIT A-3



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, NW (2822T)
WASHINGTON, DC 20460

December 22, 2009

Ms. Shannon L. Goessling
Southeastern Legal Foundation, Inc.
6100 Lake Forrest Drive, Suite 520
Atlanta, GA 30328

RE: Request No. HQ-FOI-00469-10

Dear Ms. Goessling:

This is in response to your Freedom of Information Act (FOIA) request, 5 U.S.C. 552 seeking records related to copy of records regarding the Endangerment Findings released by the US EPA on December 7, 2009 and for a waiver of fees in connection with that request.

The FOIA directs agencies to furnish records without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. 552(a)(4)(A)(iii)(1994 & Supp. IV 1998).

Requests for fee waivers must be considered **on a case-by-case basis** and address the requirements for a fee waiver in sufficient detail for the agencies to make an informed decision. In determining whether the statutory requirements are met, agencies must consider six factors in sequence. These factors are summarized below.

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor.
2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.
4. The disclosure must contribute "significantly" to public understanding of government operations or activities.
5. The extent to which disclosure will serve the requester's commercial interest, if any.
6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

Should you wish to receive a fee waiver, you must address, in sufficient detail, these six factors. You may send your response by email to hq.foia@epa.gov, or by facsimile to this office (202) 566-2147. If we do not hear from you within 7 days from the date of this letter, we will deny your request for a waiver of fees based on insufficient justification. Records will be sent if you have provided assurance of payment should fees exceed \$25.00.

If you have any questions, please contact the Requester Service Center at hq.foia@epa.gov, or call 202-566-1667.

Sincerely,

Larry F. Gottesman
National FOIA Officer

EXHIBIT A-4



SOUTHEASTERN LEGAL FOUNDATION, INC.

6100 LAKE FORREST DRIVE, N.W. • SUITE 520 • ATLANTA, GEORGIA 30328
(404) 257-9667 • FAX (404) 257-0049

December 28, 2009

SENT VIA EMAIL TO hq.foia@epa.gov

Mr. Larry F. Gottesman
National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667 FAX (202) 566-2147
E-mail: hq.foia@epa.gov

Re: Fee Waiver for Request No. HQ-FOI-00469-10

Dear Mr. Gottesman:

This letter is in response to your letter dated December 22, 2009, which discussed criteria the Environmental Protection Agency (“EPA”) uses in evaluating the appropriateness of fee waivers for Freedom of Information Act (“FOIA”) requests. We are confident our request (HQ-FOI-00469-10, hereinafter “Request”) falls entirely within the parameters of public interest and thus qualifies for the fee waiver. The information sought will “contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interests of the requestor.”¹ As such, and per your instruction, I shall address how the Request meets the criteria you listed in your December 22, 2009 letter.

As a preliminary statement, and as noted in the Request, Southeastern Legal Foundation (“SLF”) is a non-profit public interest law firm specializing in the practice of constitutional law. SLF also undertakes research on policy issues of interest to the public. SLF has conducted research and prepared similar FOIA requests relating to the functioning of the federal government on several other occasions, including most recently the Department of Commerce; these agencies and departments have always granted the fee waiver for our FOIA requests.

The first criterion requires that a FOIA request encompass “identifiable operations or activities of the government.” The first section of the Request inquires about the timing of the Endangerment Finding, and any possible coordination with international conferences dealing with generally the same premise: “anthropogenic global warming or climate change.” When, how and why the EPA released the Endangerment Finding speaks directly to the operations and activities of this government agency. The Request seeks to discover what, if any, influence international

¹ 5 U.S.C. 552(a)((4)(A)(iii)(1994 & Supp. IV 1998)

Larry F. Gottesman
December 28, 2009
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events had on the release of the Endangerment Finding. Any documents that articulate timing-related motivations of the EPA are of great public interest, given the affect a fully implemented regulatory scheme based on the Endangerment Finding would have on the United States economy.

The second section of the Request relates to any analysis conducted by the EPA in response to public comments made prior to the Endangerment Finding. Again, the information sought speaks directly to the operations and activities of the EPA. The EPA produced responses to many of the comments submitted during the public comment period. The Request seeks to ensure the EPA supported these responses by sound reasoning, beyond the support found in the responses themselves. The mechanisms, reasoning and logic derived from any reports, memoranda, data, etc. the EPA utilized to support or justify its findings against alternative or divergent conclusions is of great interest to the public.

Finally, the third section of the Request relates to any economic or financial analysis conducted for the EPA by other government agencies. This section delves into the financial information and analysis the EPA relied on for its conclusions, and thus, again, directly relates to the operations and activities of this agency. Any cost-benefit analysis or estimates about the financial implications of the Endangerment Finding is of great interest to the public, given the broad regulatory powers the Endangerment Finding potentially bestows on the EPA, and the vast portions of the United States economy the Endangerment Finding will affect.

The reasoning outlined for the first criterion is also applicable to the second criterion: that the Request is "meaningfully informative in relation to the subject matter of the request." Moreover, the Request seeks information relating to a specific subject matter: the Endangerment Finding. The contents of the Request all directly relate to the Endangerment Finding, in that they seek information on the analysis, interpretation, supporting evidence, interagency reports, etc. the EPA used for its conclusions. This information, which the EPA collected and/or produced, directly relates to its final decision to release the Endangerment Finding. The Request seeks information, which the EPA relied on to justify and substantiate its conclusions, and thereby directly relates to the subject matter.

The Request seeks information that contributes to the public interest at large and is not limited to a "narrow segment of interested persons," as required by the third criterion, further this information will significantly contribute to public understanding, as required by the fourth. First, SLF is bound by its charter to research and litigate issues of public interest. To that end, the Request meets SLF's chartered directive, and falls within its mission statement to "help individuals and businesses stymied by excessive government regulation." The Endangerment Finding, if fully implemented, will have far-reaching consequences and affect every single American. The attempted regulation and control of carbon dioxide and other ubiquitous compounds will not only affect persons working in certain industries, such as the energy sector of the economy, but all citizens

Larry F. Gottesman
December 28, 2009
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through inevitable price changes in the costs of goods and services. In addition, the regulatory scheme will affect the United State's competitive position in the global economy, as other countries likely will not agree to or enforce similar carbon reduction regulatory schemes. Thus, the implications of, and therefore the justifications for, the Endangerment Finding shall affect every citizen.

SLF has absolutely no commercial or financial interest in the requested information, and would receive no pecuniary benefit from the information sought. As such, criterion five: "extent to which disclosure will serve the requester's commercial interest" and criterion six: "extent to which the identified public interest in the disclosure outweighs the requester's commercial interest," should weigh heavily in favor of the fee waiver.

Thank you for your time and consideration in this matter. I trust this information will be sufficient as you evaluate the merits of the requested fee waiver. However, if you have any questions, please contact me at the telephone number listed below.

Sincerely,



Shannon L. Goessling
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.
6100 Lake Forrest Drive, Suite 520
Atlanta, GA 30328
(800) 474 - 8313

EXHIBIT A-5



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

January 4, 2010

OFFICE OF
ENVIRONMENTAL INFORMATION

Ms. Shannon Goessling
Southeastern Legal Foundation, Inc.
6100 Lake Forrest Drive, NW
Suite 520
Atlanta, GA 30328

RE: Request Number HQ-FOI-00469-10

Dear Ms. Goessling:

This is in response to your request for a waiver of fees in connection with your Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 request. You are seeking a copy of records regarding the Endangerment Findings released by the US Environmental Protection Agency (EPA) on December 7, 2009.

After reviewing the justification provided, your request for a waiver of fees is denied. You indicated that Southeastern Legal Foundation, Inc. is bound by its charter to research and litigate issues of public interest, however, you have not expressed a specific intent to publish or disseminate the information to the general public. Accordingly, there is no need to address the remaining prongs of the fee waiver criteria. Your request for information has been referred to the EPA Office of Air and Radiation for response.

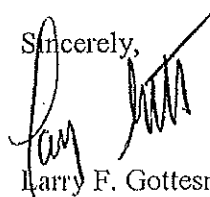
You may appeal this denial to the National Freedom of Information Office, US EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (US Postal Service only), fax: (202) 566-2147, e-mail:

Ms. Shannon Goessling
January 5, 2010
Page 2

hq.foia@epa.gov. Only items mailed through the US Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, NW, Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the RIN listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

If you have any questions, please contact me directly at (202) 566-2162.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry F. Gottesman", with a long horizontal line extending from the end of the signature.

Larry F. Gottesman
National FOIA Officer

EXHIBIT A-6



SOUTHEASTERN LEGAL FOUNDATION, INC.

6100 LAKE FORREST DRIVE, N.W. • SUITE 520 • ATLANTA, GEORGIA 30328
(404) 257-9667 • FAX (404) 257-0049

January 11, 2010

SENT VIA EMAIL TO hq.foia@epa.gov

Mr. Larry F. Gottesman
National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667 FAX (202) 566-2147
E-mail: hq.foia@epa.gov

Re: Fee Waiver Denial for Request No. HQ-FOI-00469-10

Dear Mr. Gottesman:

I am writing in response to your letter dated January 4, 2009, which denied the request for fee waiver concerning Request No. HQ-FOI-00469-10 ("Request"). Before commencing the appeal process, I would like to amend, for clarification, our fee waiver request, and ask you to reconsider your decision based on the following information:

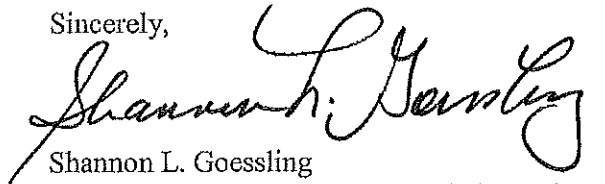
We will transmit the information in the Request to the public in a variety of formats, each comprising a "specific intent to publish or disseminate the information to the general public" including: (i.) displayed on our publicly available website; (ii.) incorporated into various publications and mailers we produce throughout the year; and (iii.) any publicly available court documents arising out of potential litigation related to the Endangerment Findings released by the US EPA on December 7, 2009.

As a public interest law firm, all of the research and litigation we conduct is produced and disseminated for the benefit of the public at large and not just a "narrow segment of interested persons."

Larry F. Gottesman
January 11, 2010
Page 2 of 2

I hope this clarification facilitates your reconsideration of the fee waiver request. Thank you for your time in this matter. If you have any questions, please contact me at the telephone number below.

Sincerely,

A handwritten signature in cursive script, reading "Shannon L. Goessling".

Shannon L. Goessling
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.
6100 Lake Forrest Drive, Suite 520
Atlanta, GA 30328
(800) 474 - 8313

EXHIBIT A-7



SOUTHEASTERN LEGAL FOUNDATION, INC.

6100 LAKE FORREST DRIVE, N.W. • SUITE 520 • ATLANTA, GEORGIA 30328
(404) 257-9667 • FAX (404) 257-0049

January 22, 2010

SENT VIA CERTIFIED MAIL
and EMAIL TO hq.foia@epa.gov
National Freedom of Information Office
U.S. EPA FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-2147 FAX (202) 566-2147
E-mail: hq.foia@epa.gov

Item No.: 7003 2260 0005 4600 6597

Re: Freedom of Information Act Appeal for Request No. HQ-FOI-00469-10

Dear FOIA Appeals Officer:

This letter is an appeal of the denial of Southeastern Legal Foundation's ("SLF") fee waiver request for Freedom of Information Act ("FOIA") Request No. HQ-FOI-00469-10 ("Request"). As a non-profit organization seeking information from the Environmental Protection Agency ("EPA"), "likely to contribute significantly to public understanding of the operations and activities of the government and not primarily [for our] commercial interest,"¹ our Request sought a fee waiver. (Exhibit "A"). In a letter dated December 22, 2009, Mr. Larry F. Gottesman, EPA National Freedom of Information Act Officer responded to the fee waiver request by outlining the six criteria the EPA utilizes to evaluate the merits such requests. (Exhibit "B"). In a December 28, 2009 letter, we articulated our justifications for a fee waiver—step-by-step—according to the criteria Mr. Gottesman presented in his letter. (Exhibit "C"). Mr. Gottesman denied our fee waiver request in a letter dated January 4, 2009. (Exhibit "D"). Mr. Gottesman's denial of the fee waiver request prompted this appeal.

A. Mr. Gottesman Unjustifiably Denied The Fee Waiver Based On The Alleged "Lack Of A Specific Intent To Publish The Information In The Request To The General Public."

SLF presumes Mr. Gottesman denied our request for fee waiver based on either the third or the fourth criteria listed in his December 22, 2009 letter. Although Mr. Gottesman did not specify exactly which criterion he found lacking, he quoted language from our reasoning addressing these criteria. The third and fourth criteria require, respectively, "[t]he disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons" and it "must contribute 'significantly' to

Freedom of Information Act Appeal
January 22, 2010
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public understanding of government operations or activities.”² Mr. Gottesman based his denial on our lack of “a specific intent to publish or disseminate the information to the general public,” as quoted in his January 4, 2010 letter.

Mr. Gottesman’s denial of the fee waiver is unjustified on multiple levels both substantively and procedurally. The first part of this appeal shall address the substantive basis for Mr. Gottesman’s denial; the second and third parts shall address the procedural defects contained in Mr. Gottesman’s interpretive methods and evaluation; and the fourth section shall address relevant case law and public policy.

B. SLF Shall Interpret, Analyze And Disseminate The Information In The Request For The Benefit Of The Public And To As Broad An Audience As Possible.

As a public interest law firm, all of the research and litigation SLF conducts is analyzed, produced and disseminated for the benefit of the public at large and not just a “narrow segment of interested persons.” In fact, in his denial letter, Mr. Gottesman acknowledged our chartered directive to research and litigate issues of public interest. However, Mr. Gottesman’s justification for fee waiver denial appears to focus solely on the possibility SLF will use/disseminate this information solely for our own benefit, or for the benefit of a narrow group of interested persons. This is an inaccurate presumption.

The Request asked for information related to the Findings³ in two general areas: (i.) information related to the timing of when the EPA decided to publish the Findings, particularly influence by or coordination with outside factions; and (ii.) any cost-benefit analysis produced by the EPA or other government agencies for the EPA related to the Findings. The potential effects of a carbon reduction regulatory scheme based on the Findings will have vast and numerous implications for the U.S. economy, and all of its citizens. SLF’s goal in requesting this information is to ensure *all* U.S. citizens are fully informed on these implications, and to investigate the constitutionality of any regulatory action promulgated by the EPA based on the Findings. SLF shall undertake all necessary effort to ensure we disseminate, analyze and interpret the information in the Request to the largest audience possible. SLF shall accomplish this goal in a variety of ways including: (i.) displayed on our publicly available website; (ii.) incorporated into various publications and mailers we produce throughout the year; and (iii.) any publicly available court documents arising out of potential litigation related to the Findings.

For over thirty years, SLF has conducted research and prepared similar FOIA requests relating to the functioning of the federal government, including most recently the Department of Commerce. Through litigation and public advocacy, SLF seeks to influence policy decisions of the federal government. SLF has incorporated the information gathered through FOIA requests in the course of litigation⁴ and through publications. For instance, SLF has conducted extensive

² 5 U.S.C. 552(a)((4)(A)(iii)(1994 & Supp. IV 1998).

³ The “Findings” refers to the “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act”; EPA Docket No: EPA-HQ-OAR-2009-0171.

⁴ See e.g., *Glavin, et al., v. Clinton, et al.*, 19 F. Supp.2d 543 (1998), *aff’d sub nom Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 924 (1999).

Freedom of Information Act Appeal
 January 22, 2010
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research and analysis relating to the decennial census, and conveyed that information to the public, including with press releases and “op-eds.” (See Exhibits “E,” “F,” and “G”). SLF always conducts its activities for benefit of the general public and always seeks to publish the information to as wide an audience as possible. SLF has applied for fee waiver for all our FOIA requests; heretofore no agency has denied the fee waiver request.

C. Mr. Gottesman Employed An Inaccurate Standard In Evaluating Criteria Three and Four As Defined By The EPA.

As stated *supra*, Mr. Gottesman stated in his denial that SLF has “not expressed a specific intent to publish or disseminate the information to the general public.” However, this “specific intent” requirement appears nowhere in the two-part FOIA fee waiver provision,⁵ nor does it appear in the six criteria outlined by Mr. Gottesman in his Dec. 22, 2009 letter. In fact, the actual standard, as outlined by the EPA and published in Code of Federal Regulations⁶ (“CFR”) is not nearly as demanding as Mr. Gottesman’s own standard. The CFR represents the official EPA interpretation of the FOIA fee waiver requirements,⁷ and therefore is more authoritative than Mr. Gottesman’s December 22, 2009 letter.

As outlined in the CFR, Criterion Three requires only that the disclosure must contribute to the understanding of a *reasonably broad audience of persons interested in the subject*, as opposed to the individual understanding of the requester.⁸ (Emphasis Added). This standard contravenes Mr. Gottesman’s requirement of “specific intent to publish or disseminate the information to the general public.” Mr. Gottesman never mentions the more limited audience the EPA articulates in the CFR in his January 4, 2010 denial letter. Thus, Mr. Gottesman appears to have employed an incorrect standard in evaluating Criterion Three of the CFR. SLF’s Request not only meets the more stringent standard imposed by Mr. Gottesman, but falls well within the “reasonably broad audience” standard actually articulated by the EPA in the CFR.

To the extent that Mr. Gottesman relied on Criterion Four to deny the fee waiver request, he is also in error. Criterion Four states the disclosure must likely “contribute ‘significantly’ to public understanding of government operations or activities . . . as compared to the level of understanding that existed prior to the disclosure.” The Request detailed SLF’s concerns about the policy and scientific bases for the Findings. SLF also expressed concern regarding the constitutionality and costs of any regulatory scheme resulting from the Findings. EPA decisions based on the Findings will affect all U.S. citizens directly or indirectly, and thus the reasoning and bases the EPA employed will “significantly” enhance the public’s understanding of the

⁵ The fee waiver provision contained in the FOIA 5 U.S.C. 552(a)((4)(A)(iii)(1994 & Supp. IV 1998) essentially contains two components, the disclosure is deemed sufficiently in the public interest and thus qualifies for a fee waiver if: (i.) the disclosure is “likely to contribute significantly to public understanding of the operations and activities of the government”; and (ii.) “is not primarily in the commercial interest of the requester.”

⁶ 40 C.F.R. § 2.107(1)(2)(i)-(vi).

⁷ The EPA divides the two requirements in the FOIA fee waiver provision, *see supra* note 2, into six separate categories. The first four correlate to the first FOIA requirement and the last two correlate to the second FOIA requirement.

⁸ 40 C.F.R. § 2.107(1)(2)(iii).

Freedom of Information Act Appeal
 January 22, 2010
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Finding's implications. SLF will disseminate this information through the channels discussed *supra*.

D. Mr. Gottesman's Denial Employed An Incorrect Interpretive Method In Evaluating The Six Criteria Utilized By The EPA.

In Mr. Gottesman's December 22, 2009 letter, he asserted "[federal] agencies must consider the six factors [appearing in the CFR] in sequence." Mr. Gottesman posited his "in sequence" formulation meant he could prematurely end the fee waiver analysis when he found one criterion lacking. Based on this misinterpretation of the CFR, Mr. Gottesman declined to evaluate at least two, perhaps three criteria. The CFR is devoid of any mention of this limitation. The CFR states only that the EPA "will consider the following factors" in evaluating the validity of a fee waiver request for the two categories. The words "in sequence" or any other phrases of priority or limiting construction are absent from the CFR. In fact, the CFR states EPA will utilize "all available information" when granting or denying a fee waiver request. As a general rule of statutory construction, words of limiting construction may not be implied where the plain meaning of the language is clear.⁹ To be sure, the CFR is not a "statute"; Mr. Gottesman not a judge; and agencies are to given wide latitude in interpreting Congressional directives.¹⁰ However, the CFR represents the EPA's *own interpretation* of the FOIA fee waiver provision and thus Mr. Gottesman, as the FOIA Officer for the EPA, is bound by it. By refusing to consider either two or three of the six factors outlined by the EPA in the CFR—all of which heavily favor a fee waiver considering SLF's non-profit status and the type of information sought—Mr. Gottesman skewed his analysis and unfairly weighed one factor as dispositive.¹¹

E. Relevant Case Law And Public Policy Both Strongly Favor SLF's Prayer For Fee Waiver.

SLF's request for fee waiver is factually similar to the case of *NRDC v. United States EPA*.¹² In that case, the Natural Resources Defense Council, Inc. ("NRDC"), an environmental group, requested fee waiver for a FOIA request to the EPA. Mr. Gottesman, denied the fee waiver, stating the requested information would not contribute to public understanding of the operations of the EPA. NRDC, following enumerated procedure, appealed Mr. Gottesman's denial to the U.S. EPA FOIA and Privacy Branch. The EPA eventually denied the appeal citing criteria two and four under the "contribute to public understanding" prong of the FOIA statute. The NRDC appealed this denial to the district court, which overturned the EPA ruling.¹³

⁹ The United States Supreme Court discussed the plain meaning rule in *Caminetti v. United States*, 242 U.S. 470, 485 (1917), reasoning "[i]t is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain... the sole function of the courts is to enforce it according to its terms." And if a statute's language is plain and clear, the Court further warned that "the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion."

¹⁰ See generally, *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

¹¹ See generally, *Friends of the Coast Fork v. United States DOI*, 110 F.3d 53, 55 (9th Cir. 1997) (admonishing the federal agency involved for finding one fee waiver factor dispositive when a balancing of all factors was required).

¹² 581 F. Supp. 2d 491 (S.D.N.Y. 2008).

¹³ The District court did find for the EPA on the issue of overbreadth, which is of no consequence on this appeal. *Id.* at 501-502.

Freedom of Information Act Appeal
January 22, 2010
Page 5 of 5

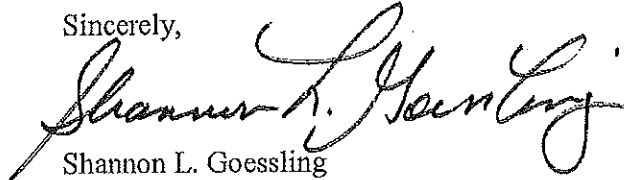
Like SLF, NRDC is a non-profit advocacy group with a history of making FOIA requests and incorporating and analyzing the information for public consumption.¹⁴ Similar to the Request, NRDC's FOIA request centered on probing any possible outside factions, which may have influenced EPA decision-making on a major policy matter. Finally, NRDC discussed why they wanted the information, how they would utilize it and how the information affected the general public.¹⁵ After failing to receive a response from EPA regarding their appeal, the NRDC brought suit in federal court. The court, in overturning the EPA's fee waiver denial, recognized insight about what influence outside forces have on agency policy-making decisions is of paramount importance.¹⁶ Indeed, information on how, why and what factors an agency considers before making a major policy decision implicates the seminal reason FOIA was enacted, thus courts favor fee waivers when FOIA requests seek this type of information.¹⁷

Finally, Mr. Gottesman ignored the strong public policy favoring fee waivers to non-profit organizations. In fact, Congress amended FOIA to ensure non-profit firms' requests for fee waivers were "liberally construed."¹⁸ Thus, Mr. Gottesman neglected to account for SLF's non-profit status in two ways. First, he did not consider Criteria Five and Six in the EPA CFR, which directs the FOIA officer to consider how the requester will utilize the information, *i.e.*, commercially or non-commercially, and second he ignored the courts' and Congress's strong policy toward granting fee waivers for noncommercial enterprises.

F. Conclusion

For all the reasons expressed above, SLF requests the U.S. EPA FOIA and Privacy Branch overturn Mr. Gottesman's denial of fee waiver included in the Request. Thank you for your time and consideration in this matter, if you have any questions, please contact me at the telephone number listed below.

Sincerely,



Shannon L. Goessling
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.
6100 Lake Forrest Drive, Suite 520
Atlanta, GA 30328
(800) 474 - 8313

¹⁴ Id. at 494-495.

¹⁵ Id. at 498-499.

¹⁶ Id. at 498.

¹⁷ *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1179 (10th Cir. 2005).

¹⁸ 132 Cong. Rec. 27, 190 (1986) (Sen. Leahy) quoted in *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003).



SOUTHEASTERN LEGAL FOUNDATION, INC.

6100 LAKE FORREST DRIVE, N.W. • SUITE 520 • ATLANTA, GEORGIA 30328
(404) 257-9667 • FAX (404) 257-0049

December 18, 2009

VIA CERTIFIED MAIL

Item No.: 7003 2260 0005 4600 6573

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
E-mail: hq.foia@epa.gov

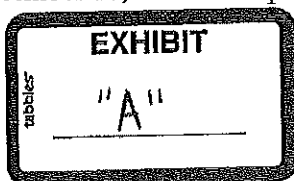
Re: Freedom of Information Act Request

Dear FOIA Compliance Officer,

Southeastern Legal Foundation ("SLF") is a non-profit public interest law firm specializing in the practice of constitutional law. SLF also undertakes research on policy issues of interest to the public. Currently, SLF is engaged in an inquiry into the Environmental Protection Agency ("EPA") and the Endangerment Findings, described and defined below. Pursuant to our investigation, we request that you provide us with any documents including, but not limited to:

1. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the timing of the following (hereinafter collectively "Endangerment Findings") released by the EPA on December 7, 2009:
 - a. Endangerment Finding: The Administrator finds that the current and projected concentrations of the six key well-mixed greenhouse gases--carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)--in the atmosphere threaten the public health and welfare of current and future generations; and
 - b. Cause or Contribute Finding: The Administrator finds that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution which threatens public health and welfare.

This inquiry is meant to cover, but is not limited to any discussions about coinciding the Endangerment Findings with the "United Nations Climate Change Conference" held December 7, 2009 through December 18, 2009 in Copenhagen, Denmark.



National Freedom of Information Officer
December 18, 2009
Page 2 of 2

2. Written and electronic correspondence, memoranda, data, or reports received produced by any employee, agent, or consultant of the EPA discussing the public comments (excluding the publicly available comments themselves) made before, and related to, the Endangerment Findings. This inquiry is meant to cover, but is not limited to any reports or analysis produced or ordered by the EPA in response to any public comment related to the Endangerment Findings;
3. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses or analyzes the financial implications or consequences of the Endangerment Findings. This inquiry is meant to cover, but is not limited to the financial implications of the Endangerment Findings on the following: (i.) the private sector in the United States or on any particular industry; (ii.) the United States government or any agency or political subdivision thereof; or (iii.) on state and local governments. This inquiry is also meant to cover any reports or analysis produced for the EPA by any other federal agency or subdivision of the United States federal government, including but not limited to, the Office of Management and Budget and the Congressional Budget Office.

This request for documents is made pursuant to the Freedom of Information Act, 5 U.S.C. § 552. We request that the documents be furnished without charge, or at reduced charges, pursuant to 15 CFR § 4.11(k), since this information is in the public interest, is likely to contribute to public understanding of the operations and activities of government, and because SLF has no commercial interest in requesting the information. If any charges are applied for the furnishing of these documents, please advise whether the costs will exceed Fifty Dollars (\$50 USD).

If you deny all or any part of this request, please cite each specific exemption you think justifies your withholding of information, and include notification of appeal procedures available under the law. If you have any questions about handling this request, you may reach me at the telephone number listed below.

Sincerely,



Shannon L. Goessling
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.
6100 Lake Forrest Drive, Suite 520
Atlanta, GA 30328
(800) 474 - 8313



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, NW (2822T)
WASHINGTON, DC 20460

December 22, 2009

Ms. Shannon L. Goessling
Southeastern Legal Foundation, Inc.
6100 Lake Forrest Drive, Suite 520
Atlanta, GA 30328

RE: Request No. HQ-FOI-00469-10

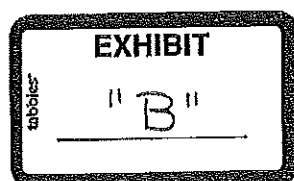
Dear Ms. Goessling:

This is in response to your Freedom of Information Act (FOIA) request, 5 U.S.C. 552 seeking records related to copy of records regarding the Endangerment Findings released by the US EPA on December 7, 2009 and for a waiver of fees in connection with that request.

The FOIA directs agencies to furnish records without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. 552(a)(4)(A)(iii)(1994 & Supp. IV 1998).

Requests for fee waivers must be considered **on a case-by-case basis** and address the requirements for a fee waiver in sufficient detail for the agencies to make an informed decision. In determining whether the statutory requirements are met, agencies must consider six factors in sequence. These factors are summarized below.

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor.
2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.



3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.
4. The disclosure must contribute "significantly" to public understanding of government operations or activities.
5. The extent to which disclosure will serve the requester's commercial interest, if any.
6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

Should you wish to receive a fee waiver, you must address, in sufficient detail, these six factors. You may send your response by email to hq.foia@epa.gov, or by facsimile to this office (202) 566-2147. If we do not hear from you within 7 days from the date of this letter, we will deny your request for a waiver of fees based on insufficient justification. Records will be sent if you have provided assurance of payment should fees exceed \$25.00.

If you have any questions, please contact the Requester Service Center at hq.foia@epa.gov, or call 202-566-1667.

Sincerely,

Larry F. Gottesman
National FOIA Officer



SOUTHEASTERN LEGAL FOUNDATION, INC.

6100 LAKE FORREST DRIVE, N.W. • SUITE 520 • ATLANTA, GEORGIA 30328
(404) 257-9667 • FAX (404) 257-0049

December 28, 2009

SENT VIA EMAIL TO hq.foia@epa.gov

Mr. Larry F. Gottesman
National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667 FAX (202) 566-2147
E-mail: hq.foia@epa.gov

Re: Fee Waiver for Request No. HQ-FOI-00469-10

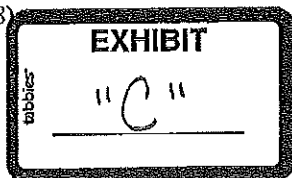
Dear Mr. Gottesman:

This letter is in response to your letter dated December 22, 2009, which discussed criteria the Environmental Protection Agency ("EPA") uses in evaluating the appropriateness of fee waivers for Freedom of Information Act ("FOIA") requests. We are confident our request (HQ-FOI-00469-10, hereinafter "Request") falls entirely within the parameters of public interest and thus qualifies for the fee waiver. The information sought will "contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interests of the requestor."¹ As such, and per your instruction, I shall address how the Request meets the criteria you listed in your December 22, 2009 letter.

As a preliminary statement, and as noted in the Request, Southeastern Legal Foundation ("SLF") is a non-profit public interest law firm specializing in the practice of constitutional law. SLF also undertakes research on policy issues of interest to the public. SLF has conducted research and prepared similar FOIA requests relating to the functioning of the federal government on several other occasions, including most recently the Department of Commerce; these agencies and departments have always granted the fee waiver for our FOIA requests.

The first criterion requires that a FOIA request encompass "identifiable operations or activities of the government." The first section of the Request inquires about the timing of the Endangerment Finding, and any possible coordination with international conferences dealing with generally the same premise: "anthropogenic global warming or climate change." When, how and why the EPA released the Endangerment Finding speaks directly to the operations and activities of this government agency. The Request seeks to discover what, if any, influence international

¹ 5 U.S.C. 552(a)((4)(A)(iii)(1994 & Supp. IV 1998)



Larry F. Gottesman
December 28, 2009
Page 2 of 3

events had on the release of the Endangerment Finding. Any documents that articulate timing-related motivations of the EPA are of great public interest, given the affect a fully implemented regulatory scheme based on the Endangerment Finding would have on the United States economy.

The second section of the Request relates to any analysis conducted by the EPA in response to public comments made prior to the Endangerment Finding. Again, the information sought speaks directly to the operations and activities of the EPA. The EPA produced responses to many of the comments submitted during the public comment period. The Request seeks to ensure the EPA supported these responses by sound reasoning, beyond the support found in the responses themselves. The mechanisms, reasoning and logic derived from any reports, memoranda, data, etc. the EPA utilized to support or justify its findings against alternative or divergent conclusions is of great interest to the public.

Finally, the third section of the Request relates to any economic or financial analysis conducted for the EPA by other government agencies. This section delves into the financial information and analysis the EPA relied on for its conclusions, and thus, again, directly relates to the operations and activities of this agency. Any cost-benefit analysis or estimates about the financial implications of the Endangerment Finding is of great interest to the public, given the broad regulatory powers the Endangerment Finding potentially bestows on the EPA, and the vast portions of the United States economy the Endangerment Finding will affect.

The reasoning outlined for the first criterion is also applicable to the second criterion: that the Request is "meaningfully informative in relation to the subject matter of the request." Moreover, the Request seeks information relating to a specific subject matter: the Endangerment Finding. The contents of the Request all directly relate to the Endangerment Finding, in that they seek information on the analysis, interpretation, supporting evidence, interagency reports, etc. the EPA used for its conclusions. This information, which the EPA collected and/or produced, directly relates to its final decision to release the Endangerment Finding. The Request seeks information, which the EPA relied on to justify and substantiate its conclusions, and thereby directly relates to the subject matter.

The Request seeks information that contributes to the public interest at large and is not limited to a "narrow segment of interested persons," as required by the third criterion, further this information will significantly contribute to public understanding, as required by the fourth. First, SLF is bound by its charter to research and litigate issues of public interest. To that end, the Request meets SLF's chartered directive, and falls within its mission statement to "help individuals and businesses stymied by excessive government regulation." The Endangerment Finding, if fully implemented, will have far-reaching consequences and affect every single American. The attempted regulation and control of carbon dioxide and other ubiquitous compounds will not only affect persons working in certain industries, such as the energy sector of the economy, but all citizens

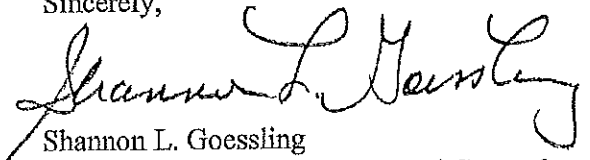
Larry F. Gottesman
December 28, 2009
Page 3 of 3

through inevitable price changes in the costs of goods and services. In addition, the regulatory scheme will affect the United State's competitive position in the global economy, as other countries likely will not agree to or enforce similar carbon reduction regulatory schemes. Thus, the implications of, and therefore the justifications for, the Endangerment Finding shall affect every citizen.

SLF has absolutely no commercial or financial interest in the requested information, and would receive no pecuniary benefit from the information sought. As such, criterion five: "extent to which disclosure will serve the requester's commercial interest" and criterion six: "extent to which the identified public interest in the disclosure outweighs the requester's commercial interest," should weigh heavily in favor of the fee waiver.

Thank you for your time and consideration in this matter. I trust this information will be sufficient as you evaluate the merits of the requested fee waiver. However, if you have any questions, please contact me at the telephone number listed below.

Sincerely,



Shannon L. Goessling
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.
6100 Lake Forrest Drive, Suite 520
Atlanta, GA 30328
(800) 474 - 8313



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

January 4, 2010

OFFICE OF
ENVIRONMENTAL INFORMATION

Ms. Shannon Goessling
Southeastern Legal Foundation, Inc.
6100 Lake Forrest Drive, NW
Suite 520
Atlanta, GA 30328

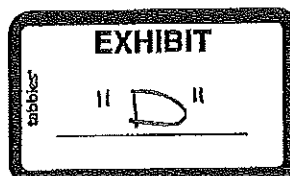
RE: Request Number HQ-FOI-00469-10

Dear Ms. Goessling:

This is in response to your request for a waiver of fees in connection with your Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 request. You are seeking a copy of records regarding the Endangerment Findings released by the US Environmental Protection Agency (EPA) on December 7, 2009.

After reviewing the justification provided, your request for a waiver of fees is denied. You indicated that Southeastern Legal Foundation, Inc. is bound by its charter to research and litigate issues of public interest, however, you have not expressed a specific intent to publish or disseminate the information to the general public. Accordingly, there is no need to address the remaining prongs of the fee waiver criteria. Your request for information has been referred to the EPA Office of Air and Radiation for response.

You may appeal this denial to the National Freedom of Information Office, US EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (US Postal Service only), fax: (202) 566-2147, e-mail:



Internet Address (URL) • <http://www.epa.gov>

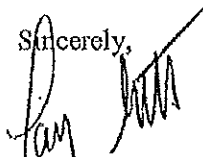
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Ms. Shannon Goessling
January 5, 2010
Page 2

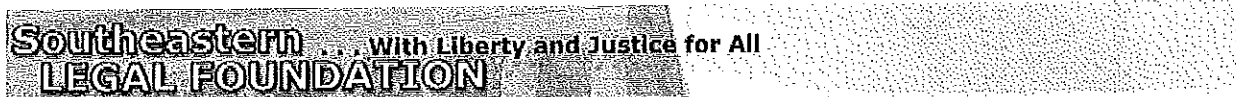
hq.foia@epa.gov. Only items mailed through the US Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, NW, Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the RIN listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

If you have any questions, please contact me directly at (202) 566-2162.

Sincerely,

A handwritten signature in black ink, appearing to read "Harry F. Gottesman", written over a horizontal line.

Harry F. Gottesman
National FOIA Officer



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January 22, 2010

Case Centers

ACORN PARADE OF LEGAL HORRIBLES CONTINUES, SLF CALLS ON CENSUS TO DISENGAGE
9/13/2009

Census Supreme Court Victors Decry ACORN Role **SLF CALLS FOR 'DISENGAGEMENT' FROM ACORN FOR 2010 CENSUS AS EVIDENCE MOUNTS OF ONGOING LEGAL TROUBLES**

(September 10, 2009/ATLANTA): Southeastern Legal Foundation (SLF) today called on the Obama White House and congressional leaders to “disengage from the process under way that would empower ACORN to do the job of census-takers in fulfilling the constitutional mandate of the decennial Census.” SLF continues its national involvement in the Census issue (see below).

Pointing to the disclosure this week that six ACORN-affiliated individuals in south Florida were arrested – and five more are being sought for arrest – for falsifying nearly 900 voter registration forms in 2008 as a “continuing strategy of deception and manipulation of our constitutional processes,” Shannon Goessling, SLF executive director and chief legal counsel, warned that “calling on ACORN to help increase the accuracy of the Census head count is the equivalent of asking Bernard Madoff to oversee new financial regulations.”

Southeastern Legal Foundation, which won a landmark 1999 U.S. Supreme Court decision banning the use of so-called ‘statistical sampling’ for the 2000 Census proposed by the Clinton administration (*Glavin v. Clinton*), has filed Freedom of Information Act (FOIA) requests with the U.S. Commerce Department and the Obama White House to identify new programs that seek to use statistical sampling for the 2010 Census. SLF has also responded to requests from the congressional Census Task Force. “If necessary, we intend to go back to court to enforce the U.S. Supreme Court mandate against this central threat to representative democracy,” said Goessling.

“By employing ACORN to ‘assist’ on the front-end actual enumeration head count mandated by the U.S. Constitution for the 2010 Census, the Obama administration will guarantee controversy that has never been part of the census-taking process in our nation’s history,” Goessling added.

ACORN’s history of legal controversies runs deep, as detailed in a recent report issued by the GOP members of the House Oversight and Government Reform Committee, quoted and highlighted below:

“The Association of Community Organizations for Reform Now (ACORN) has repeatedly and deliberately engaged in systemic fraud,” according to the report’s executive summary. “Both structurally and operationally, ACORN hides behind a paper wall of nonprofit corporate protections to conceal a criminal conspiracy on the part of its directors, to launder federal money in order to pursue a partisan political agenda and to manipulate the American electorate. Emerging accounts of widespread deceit and corruption raise the need for a criminal investigation of ACORN.

- ∴ ACORN has evaded taxes, obstructed justice, engaged in self dealing, and aided and abetted a cover-up of the \$948,607.50 embezzlement by Dale Rathke, the brother of ACORN founder Wade Rathke.
- ∴ ACORN has committed investment fraud, deprived the public of its right to honest services, and engaged in a racketeering enterprise affecting interstate commerce.
- ∴ ACORN has committed a conspiracy to defraud the United States by using taxpayer funds for partisan political activities.



- ∴ ACORN has submitted false filings to the Internal Revenue Service (IRS) and the Department of Labor, in addition to violating the Fair Labor Standards Act (FLSA).
- ∴ ACORN falsified and concealed facts concerning an illegal transaction between related parties in violation of the Employee Retirement Income Security Act of 1974 (ERISA)."

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January 22, 2010

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Case Centers

CENSUS 2010 - PRESIDENT OBAMA SET TO VIOLATE U.S. CONSTITUTION
2/18/2009

As appeared in *The Washington Times*
Wednesday, February 18, 2009

Numbers game with Census?

Shannon Goessling

The largest civilian government undertaking in our national experience is set again for 2010 - and like the 2000 Census, it's a highly charged political target. However, the U.S. Supreme Court has given a clear road map for conducting the Census to avoid political manipulation - and the Obama administration should pay attention.

The decennial Census, which is mandated by the U.S. Constitution, serves two primary functions. First, it determines how many people live in the United States and where they live, which tells us how to apportion representation in the U.S. House of Representatives. Some states lose congressional districts; some states gain.

Second, the Census helps Congress and the executive departments decide where to spend billions of dollars in government largess, based on population trends. While this is not strictly "constitutional" in nature, it is important - particularly in today's economy.

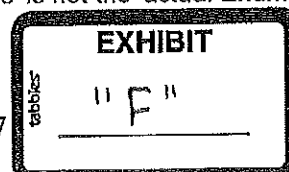
In the late 1990s, the Clinton administration authorized the Census Bureau, which is a part of the U.S. Commerce Department, to use a highly controversial method known as "statistical sampling" rather than the "actual enumeration" head count demanded by the Constitution. The Clinton plan was to conduct a traditional head count of 90 percent of the U.S. population, and to statistically "estimate" the remaining 10 percent. That's an intentional undercount of 30 million people.

The overriding problem with statistical sampling, apart from the inaccuracies it creates at the critical Census block and tract levels (neighborhoods and communities), is that it gives statisticians appointed by politicians the power to determine final congressional apportionment numbers. Imagine 30 million "virtual" people; where they live and how many there are would be at the mercy of political statisticians.

That's precisely why the U.S. Supreme Court held in our 1999 case that the Census must be conducted as an "actual enumeration, counting the whole number of persons in each state," according to the U.S. Constitution. There is no room for statistical manipulation in this standard.

Based on recent efforts by the Obama administration to bring control of the Census under the White House rather than the Commerce Department, the manner of the 10-year Census is at stake once again. The issue figured in New Hampshire Republican Sen. Judd Gregg's withdrawal as the Obama administration's prospective commerce secretary.

U.S. Supreme Court Justice Antonin Scalia wrote in the 1999 Census decision, "For reasons of text and tradition, fully compatible with a constitutional purpose that is entirely sensible, a strong case can be made that an apportionment census conducted with the use of 'sampling techniques' is not the 'actual Enumeration' that the Constitution requires."



Nevertheless, then-Commerce Secretary William Daley asserted that, because the court specifically rejected statistical sampling for congressional apportionment, sampling could be used for "other purposes." Enter Census 2010 and the revived (and unconstitutional) effort by some in the new administration to reinsert sampling into the Census equation.

It has never been more important that the Census be conducted properly and that the final count be as accurate as possible - without statistics. The allocation of now-trillions of dollars in taxpayer funds across the 50 states - and the election of those in Congress who make those expenditures - is now on the table. Will it take another lawsuit, and yet another trip to the United States Supreme Court, to ensure the Census is conducted according to the Constitution?

Shannon L. Goessling is executive director and chief legal counsel for Southeastern Legal Foundation, which won a 1999 U.S. Supreme Court decision protecting the Census from statistical sampling.

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January 22, 2010

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Case Centers

CENSUS BUREAU SEVERS TIES WITH ACORN - BUT WATCH OUT FOR OTHER GROUPS
9/14/2009

"First step in right direction, but watch for other groups"
SLF APPLAUDS CENSUS BUREAU TIE-SEVERING WITH ACORN

(Atlanta, GA/Sept. 14, 2009): Southeastern Legal Foundation (SLF) today praised U.S. Bureau of the Census Director Robert Groves for severing ties with ACORN in light of recent nationally profiled legal outrages.

SLF, which is currently monitoring federal preparations for the 2010 Census in light of its successful 1999 U.S. Supreme Court case protecting the integrity of the decennial census from Clinton administration plans to use statistical sampling rather than the 'actual enumeration' head count required by the U.S. Constitution, will be reviewing information disclosed by the Census Bureau and White House in Freedom of Information Act (FOIA) requests issued last month.

"We call on Director Groves and congressional leadership to thoroughly sift the remaining 300 'partners' of the Census Bureau to ensure that ACORN-like patterns of election law violations and financial fraud are equally disqualifying," said Shannon L. Goessling, SLF executive director and chief legal counsel. **"The cornerstone of representative democracy – the 10-year census – must be vigilantly protected against those who would politicize it on the front end, or manipulate it on the back end, as with statistical sampling."**

According to Goessling, SLF is prepared to return to court to prohibit the use of statistical sampling or modeling in lieu of a complete head count for purposes of the Census-based apportionment of Congress among the states.

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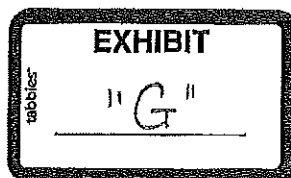


EXHIBIT A-8



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

OFFICE OF
GENERAL COUNSEL

Shannon L. Goessling
Executive Director & Chief Legal Counsel
Southeastern Legal Foundation, Inc.
6100 Lake Forest Drive, N.W. Suite 520
Atlanta, GA 30328

FEB 23 2010

Re: Freedom of Information Act Request HQ-FOI-00469-10

Dear Ms. Goessling:

I am responding to your Freedom of Information Act ("FOIA") appeal. You appealed the January 4, 2009, fee waiver decision of Larry F. Gottesman, National FOIA Officer ("decision") of the U.S. Environmental Protection Agency ("EPA" or "Agency"). The decision indicated that your fee waiver request was being denied because you did not express a specific intent to publish or disseminate the information to the general public. You appealed the decision.

Based on the additional information you provided in your January 22, 2010, fee waiver appeal, I have concluded that your appeal should be, and is, granted. By providing additional information related to the third fee waiver element, you have demonstrated that you meet the requirements to receive a fee waiver for your narrowly tailored request.

In your appeal, you indicated that Southeastern Legal Foundation, Inc. "shall undertake all necessary effort to ensure we disseminate, analyze and interpret the information in the Request to the largest audience possible." Letter from Shannon L. Goessling to National Freedom of Information Office dated January 22, 2010. You also committed to disseminating the information on your website and through Southeastern Legal Foundation publications. *Id.* Your proposed dissemination through "available court documents" does not meet your burden. However, in light of your other commitments, you have met the third fee waiver element.

This letter constitutes EPA's final determination on your appeal. In accordance with 5 U.S.C. § 552(a)(4)(B), you have the right to seek judicial review of this determination by instituting an action in the district court of the United States in the district in which you reside, or have your principal place of business, or in which the Agency records are situated, or in the District of Columbia.

Ms. Shannon L. Goessling
HQ-FOI-00469-10
Page 2

Should you have any questions concerning this matter, please call Dan Schulson at (202) 564-3035.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Miller", with a horizontal line extending to the right.

Kevin Miller
Assistant General Counsel
General Law Office

cc: HQ FOI Office

EXHIBIT A-9

-----Original Message-----

From: Hyland.Dana@epamail.epa.gov [mailto:Hyland.Dana@epamail.epa.gov]

Sent: Tuesday, July 06, 2010 7:16 PM

To: Shannon Goessling

Subject: HQ-FOI-00469-10

Dear Ms. Goessling,

I have recently been assigned to handle FOIA requests for EPA's Climate Change Division and am trying to figure out the status of several FOIAs. In doing so, I am working on the request from Southeastern Legal Foundation (HQ-FOI-00469-10), dated December 18, 2009, seeking documents related to the timing of the Endangerment Findings (released December 7, 2009), as well as discussions of the public comments on the Findings, and financial implications or consequences of the Findings.

I am writing to ask whether you are still interested in pursuing this request. Please contact me by July 9, 2010, if you believe that this matter remains open. If I do not hear by then that you still need documents pursuant to this request, we will consider this matter closed.

Thank you very much for your interest in EPA's activities and for responding.

Dana Hyland
Climate Change Division
Environmental Protection Agency
hyland.dana@epa.gov
phone: 202-343-9963
fax: 202-343-2290

EXHIBIT A-10

-----Original Message-----

From: Shannon Goessling
Sent: Wednesday, July 07, 2010 3:33 PM
To: Hyland.Dana@epamail.epa.gov
Subject: RE: HQ-FOI-00469-10

Dear Dana:

I was under the assumption EPA was actively processing this request. I spoke with Tina Murphy and one other person from EPA on or about March 9, 2010 regarding the scope of the request; I have not heard anything else from EPA. If EPA has not been actively fulfilling the request, I am not sure why. Please update me on the progress made so far. Thank you.

Sincerely,
Shannon

Shannon L. Goessling
Executive Director & Chief Legal Counsel
Southeastern Legal Foundation
2255 Sewell Mill Road
Suite 320
Marietta, Georgia 30062
telephone: 770-977-2131
facsimile: 770-977-2134
www.southeasternlegal.org
www.epalawsuit.org

Please make note of the new address and numbers for SLF!

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EXHIBIT A-11



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

JUL 16 2010

OFFICE OF
AIR AND RADIATION

Ms. Shannon Goessling
Southeastern Legal Foundation
6100 Lake Forrest Drive NW
Suite 520
Atlanta, Georgia 30328

RE: Freedom of Information Act Request HQ-FOI-0469-10

Dear Ms. Goessling:

Enclosed with this letter are four responsive documents to Southeastern Legal Foundation's December 18, 2009 Freedom of Information Act request, regarding documents related to EPA's endangerment and cause or contribute findings under Section 202(a) of the Clean Air Act. Based on our phone call today, we are releasing these documents as part of a rolling response to your request. They constitute the first set and others will follow as they become available.

You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W. Room 6416J, Washington DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 day limit. The appeal should include the RIN listed in the subject line above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Please contact Dana Hyland at hyland.dana@epa.gov or (202) 343-9963 should you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Dina Kruger".

Dina Kruger, Director
Climate Change Division

cc: Headquarters FOIA Office
Enclosure

EXHIBIT A-12

Rona
Birnbaum/DC/USEPA/US
07/21/2009 05:30 PM

To Lesley Jantarasami
cc
bcc
Subject endangerment team meeting

Meeting

Date 07/23/2009 03:00:00 PM
Time 03:00:00 PM to 04:00:00 PM
Chair Rona Birnbaum

Invitees

Required Ben DeAngelo; David Chalmers; Jason Samenow; Jeremy Martinich; Lesley
Jantarasami; Marcus Sarofim; Michael Kolian; William Perkins

Optional

FYI

Location

check-in status of comments/responses.

Darrell
Winner/DC/USEPA/US
08/04/2009 05:19 PM

To Anne Grambsch, Ben DeAngelo, Chris Weaver, Doug Grano,
Marcus Sarofim, Michael Kolian, Sara Terry
cc Rona Birnbaum
bcc
Subject Continued discussion on response to public comments re:
TSD AQ

Meeting

Date 08/10/2009
Time 03:00:00 PM to 04:00:00 PM
Chair Darrell Winner
Invitees
Required Anne Grambsch; Ben DeAngelo; Chris Weaver; Doug Grano; Marcus
Sarofim; Michael Kolian; Sara Terry
Optional Rona Birnbaum
FYI
Location call in call in '

Carol Holmes/DC/USEPA/US
10/30/2009 11:15 PM

To Ben DeAngelo, Dina Kruger, John Hannon, Rona Birnbaum
cc
bcc
Subject preamble draft

Meeting

Date 10/31/2009
Time 11:00:00 AM to 12:00:00 PM
Chair Carol Holmes
Invitees
Required Ben DeAngelo; Dina Kruger; John Hannon; Rona Birnbaum
Optional
FYI
Location

Darrell
Winner/DC/USEPA/US
12/09/2009 04:41 PM

To Doug Grano
cc Anne Grambsch, Brooke Hemming, Chris Weaver, Bryan
Bloomer, John Dawson
bcc
Subject Re: FYI--Endangerment Finding

Thanks for the feedback Doug. It was fun working with you on the reply to comments!

-darrell

Darrell Winner, Ph.D.
Director, Applied Science Division
National Center for Environmental Research
winner.darrell@epa.gov
phone 202-343-9748
fax 202-233-0677

Regular mail:
USEPA/ORD/NCER/ASD (8726F)
1200 Pennsylvania Ave NW
Washington, DC 20460-0001

FedEx/Courier:
USEPA/ORD/NCER/ASD
Room 3111
1025 F St NW
Washington, DC 20004

(Woodies Building / metro stop: Metro Center)

Doug Grano Just wanted to let you know that the Interim Ass... 12/09/2009 04:18:46 PM

From: Doug Grano/RTP/USEPA/US
To: Brooke Hemming/RTP/USEPA/US@EPA, Anne Grambsch/DC/USEPA/US@EPA, Darrell
Winner/DC/USEPA/US@EPA, Chris Weaver/DC/USEPA/US@EPA
Date: 12/09/2009 04:18 PM
Subject: FYI--Endangerment Finding

Just wanted to let you know that the Interim Assessment was very helpful in this effort (i.e., very policy-relevant research). The Administrator based her Endangerment Finding decision (Monday) with respect to public health primarily on the impacts of climate change on ozone and impacts due to extreme weather. Other health impacts, including heat and aeroallergens are secondary to the Finding.

--Doug

"The evidence concerning adverse air quality impacts provides strong and clear support for an endangerment finding . . . the human-induced climate change may alter extreme weather events also clearly supports a finding of endangerment."

For public welfare: "The evidence concerning adverse impacts in the areas of water resources and sea level rise and coastal areas provides the clearest and

strongest support for an endangerment finding."

For more information on EPA's findings:
<http://www.epa.gov/climatechange/endangerment.html>

EXHIBIT A-13

RE: HQ-FOI-00469-10

Page 1 of 4

RE: HQ-FOI-00469-10

Amy L Macrina

Sent: Thursday, October 27, 2011 9:17 PM
To: Hyland.Dana@epamail.epa.gov
Cc: Shannon Goessling; Jovette Ayers
Categories: Logged - Billing

Thank you, Dana. Please call me if you have any questions during processing.

Amy L. Macrina
Law Clerk
SOUTHEASTERN LEGAL FOUNDATION, INC.
2255 Sewell Mill Road
Suite 320
Marietta, GA 30062
Phone No.: (770) 977 - 2131
Fax No.: (770) 977 - 2134
www.southeasternlegal.org

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From: Hyland.Dana@epamail.epa.gov [Hyland.Dana@epamail.epa.gov]
Sent: Thursday, October 27, 2011 5:23 PM
To: Amy L Macrina
Cc: Jovette Ayers; Birnbaum.Rona@epamail.epa.gov; Shannon Goessling
Subject: RE: HQ-FOI-00469-10

Amy,
To clarify, we estimate that processing of HQ-FOI-00469-10 will be completed in full by February 2012, with rolling responses to be produced between now and then.

We do not have additional responsive documents ready at this time, but will release them as soon as we do. I expect that we would have the next response to SLF by the end of November.

Sincerely,

Dana Hyland
Climate Change Division

RE: HQ-FOI-00469-10

Page 2 of 4

Environmental Protection Agency
hyland.dana@epa.gov
phone: 202-343-9963

From: Amy L Macrina <amacrina@southeasternlegal.org>
To: Dana Hyland/DC/USEPA/US@EPA
Cc: Rona Birnbaum/DC/USEPA/US@EPA, Shannon Goessling
<Shannon@southeasternlegal.org>, Jovette Ayers
<jayers@southeasternlegal.org>
Date: 10/27/2011 02:05 PM
Subject: RE: HQ-FOI-00469-10

Dana,

Thank you for the response. To clarify, is it your estimate that processing of HQ-FOI-00469-10 will be completed in full by February 2012, with "rolling responses" to be produced between now and then, or that we can expect to not receive the second "rolling response" until completion in February?

SLF appreciates that our request may require the processing of voluminous materials. If it becomes feasible to narrow or otherwise modify our original request, I will contact you with that information. Also, we are willing to accept EPA's response in phases, if it will allow us to begin receiving responsive documents more quickly. Ms. Kruger's July 16, 2010, letter said the enclosed rolling response was "the first set and others will follow as they become available." I would like to confirm whether EPA's processing since July 2010 has produced additional responsive documents and, if so, whether the EPA is prepared to release what is available now.

Amy L. Macrina, Esq.
Litigation Fellow
Southeastern Legal Foundation
2255 Sewell Mill Road
Suite 320
Marietta, Georgia 30062
telephone: 770-977-2131
facsimile: 770-977-2134
www.southeasternlegal.org
www.epalawsuit.org

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RE: HQ-FOI-00469-10

Page 3 of 4

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-----Original Message-----

From: Hyland.Dana@epamail.epa.gov [mailto:Hyland.Dana@epamail.epa.gov]
 Sent: Thursday, October 27, 2011 1:40 PM
 To: Amy L Macrina
 Cc: Birnbaum.Rona@epamail.epa.gov
 Subject: Re: HQ-FOI-00469-10

Ms. Macrina,

Thank you for contacting us about your Freedom of Information Act (FOIA) request (HQ-FOI-00469-10). At this time, the Agency is diligently processing this FOIA request.

As you may know, prior to the July 16, 2010 letter you mention in your email, I participated in a call with Ms. Goessling and Carol Holmes, of EPA. During this call we conveyed to the Southeastern Legal Foundation (SLF) that the search EPA conducted turned up over 8,000 potentially responsive documents. Due to the voluminous number of documents, we asked Ms. Goessling if she would consider modifying or narrowing the request to better focus on the issues you wish to be addressed. This would also reduce the processing time.

In addition, some responsive documents for this FOIA request overlap with another request that is currently in litigation.

With these issues, we continue to process SLF's FOIA request, but any narrowing would greatly help our efforts. Please let me know if this is something SLF is willing to consider. We would be happy to have a conversation with you to further discuss the processing of this FOIA request.

Given the voluminous amount of documents and related litigation, we believe will be able to complete the FOIA request by February 2012. Of course, as we continue to process this request, we will let SLF know if we can respond sooner. As noted earlier, if SLF would like to modify its request so that it may be processed sooner, please contact us.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Dana Hyland
 Climate Change Division
 Environmental Protection Agency
 hyland.dana@epa.gov
 phone: 202-343-9963

From: Amy L Macrina <amacrina@southeasternlegal.org>
 To: Dana Hyland/DC/USEPA/US@EPA
 Cc: Shannon Goessling <Shannon@southeasternlegal.org>, Jovette Ayers <jayers@southeasternlegal.org>
 Date: 10/25/2011 12:04 PM

RE: HQ-FOI-00469-10

Subject: HQ-FOI-0469-10

Ms. Hyland,

I am a Litigation Fellow with Southeastern Legal Foundation, Inc., and I have taken over management of outstanding FOIA matters for SLF. I am contacting you about a FOIA request to your agency which originated in December, 2009, and which remains incomplete.

Regarding HQ-FOI-0469-10, the most recent communications from your office to SLF were a grant of fee waiver by Mr. Kevin Miller on February 3, 2010, and a partial release of responsive documents (called a "rolling response" by Director Dina Kruger) on July 16, 2010. Since July 16, 2010, we have received no further contact from you or from Ms. Kruger, and we have received no more "rolling responses" to our original request for information re. the EPA's Endangerment Findings.

At this time, which is more than 400 days since your office's last communication to SLF on this matter, we must ask for an update on the status of our still-pending FOIA request, including your estimates of how long completion of processing on the request will take.

Please do not hesitate to call me to discuss this matter if you have any questions. I look forward to working with you to get this FOIA request processed as soon as possible.

Amy L. Macrina, Esq.
Litigation Fellow
Southeastern Legal Foundation
2255 Sewell Mill Road
Suite 320
Marietta, Georgia 30062
telephone: 770-977-2131
facsimile: 770-977-2134
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EXHIBIT A-14

Amy L Macrina

From: Hyland.Dana@epamail.epa.gov
Sent: Tuesday, November 29, 2011 1:58 PM
To: Shannon Goessling
Cc: Birnbaum.Rona@epamail.epa.gov; Amy L Macrina; Jovette Ayers;
FOIA_HQ@epamail.epa.gov
Subject: HQ-FOI-00469-10
Attachments: 2011.11.29 SLF Response.pdf; 2011.11.29 SLF Release.pdf
Categories: Printed for file

Dear Ms. Goessling:

Attached please find our next rolling response to your FOIA request and a cover letter.

Sincerely,

Dana Hyland
Climate Change Division
Environmental Protection Agency
hyland.dana@epa.gov
phone: 202-343-9963

(See attached file: 2011.11.29 SLF Response.pdf)(See attached file:
2011.11.29 SLF Release.pdf)



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

NOV 29 2011

OFFICE OF
AIR AND RADIATION

Ms. Shannon Goessling
Southeastern Legal Foundation
2255 Sewell Mill Road
Suite 320
Marietta, Georgia 30062

RE: Freedom of Information Act Request HQ-FOI-00469-10

Dear Ms. Goessling:

Enclosed please find another installment of EPA's rolling response to the above referenced Freedom of Information Act (FOIA) request, which asks for documents related to EPA's endangerment and cause or contribute findings under Section 202(a) of the Clean Air Act.

As noted above, EPA is providing its response to this FOIA Request on a rolling basis. Thus the final installment of our response will contain language closing out the FOIA and providing for rights of appeal at that time.

Please contact Dana Hyland at hyland.dana@epa.gov or 202-343-9963 should you have any further questions.

Sincerely,

A handwritten signature in cursive script that reads "Rona Birnbaum".

Rona Birnbaum, Acting Director
Climate Change Division

cc: Headquarters FOIA Office
Enclosure