

# EXHIBIT B-1



**SOUTHEASTERN LEGAL FOUNDATION, INC.**

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

April 12, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

No.: 7003 2260 0005 4600 6221

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

Re: Freedom of Information Act Request

Dear Sir or Madam:

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 pursuing information on the awards and uses of federal grants for scientific research. Pursuant to our investigation, we request that you provide the following, as well as relevant documents not otherwise described which fall within the general scope of this request:

1. Grant applications seeking federal funds for any and all research on global climate change, its causes and effects, methods of measuring changes in climate, and responses to climate change, in any scientific discipline and for any purpose;
2. Awards, grants, or funding notifications made pursuant to applications seeking federal funds for research on global climate change, its causes and effects, methods of measuring changes in climate, and responses to climate change, in any scientific discipline and for any purpose;
3. Accompanying and subsequent correspondence between your agency and grant applicants or recipients, including but not limited to supplementals, tailoring agreements, revisions or amendments, compliance instructions, and completeness, eligibility, or substantive review documents;

U.S. Environmental Protection Agency  
Freedom of Information Act Request  
April 12, 2010  
Page 2 of 2

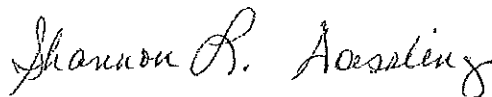
4. Denial or deferral of awards, grants, or funding made in response to applications seeking federal funds for research on global climate change, its causes and effects, methods of measuring changes in climate, and responses to climate change, in any scientific discipline and for any purpose;
5. Any and all documents referencing, describing, or creating: contracts for labor, consulting, or employment; purchases of capital or materiel; transfers or purchases of real property; and any other agreements entered by the funding grantee or its principal investigator in furtherance of or in conjunction with federally funded research on global climate change, its causes and effects, methods of measuring changes in climate, and responses to climate change, in any scientific discipline and for any purpose.

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).

In addition, we ask for expedited processing of this request for information. SLF's purpose is the dissemination of information to the public regarding the allocation of federal funds for scientific research. I certify that the foregoing statement is true and correct, to the best of my knowledge and belief.

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 and Chief Legal Counsel

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

# EXHIBIT B-2



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

April 20, 2010

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

RE: Request No: HQ-FOI-01115-10

Dear Ms. Goessling,

This is to acknowledge receipt of your Freedom of Information Act (FOIA), 5 U.S.C. 552, request dated April 12, 2010 and received in this office on April 20, 2010, for records related to:

copy of records regarding grant applications, awards and uses of federal grants for scientific research, etc., regarding climate change, etc.

Your request has been forwarded to OAR OARM 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](mailto:hq.foia@epa.gov). Please provide your FOIA request number in all communications.

Sincerely,

Larry F. Gottesman  
National FOIA Officer

# EXHIBIT B-3



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

April 20, 2010

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

RE: Request No. HQ-FOI-01115-10

Dear Ms. Goessling :

This is in response to your Freedom of Information Act (FOIA) request, 5 U.S.C. 552, for copy of records regarding grant applications, awards and uses of federal grants for scientific research, etc., regarding climate change, etc.. You are seeking expedited processing and a waiver of fees. This office needs additional information from you.

**Expedited Processing:**

Your request does not contain the proper justification for expedited processing as set out in the Electronic FOIA Amendments of 1996, 5 U.S.C. 552(a)(6)(E)(v). In order for your request to receive expedited processing, you must show compelling need by either:

- (i) Establishing that the failure to obtain the records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
- (ii) Demonstrating that an urgency to inform the public that actual or alleged Federal Government activity exists. Applies provision **only** to requesters primarily engaged in disseminating information.

Your justification should include a statement certified to be true and correct to the best of your knowledge and belief. Upon receipt of your expedited processing

justification, the Agency will determine whether to grant your request and timely notify you of that determination.

**Fee Waiver:**

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 regarding the waiver the fees. In determining whether the statutory requirements are met, agencies must consider the following six factors. These factors are:

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.

Accordingly, in order for the Agency to consider your request for a fee waiver, you must address, in sufficient detail, the six factors listed above.

**Your response:**

You may send your response by facsimile to this office at 202-566-2147 or email it to [hq.foia@epa.gov](mailto:hq.foia@epa.gov). Please include the request identification number on all communications.



If we do not hear from you within 7 days from the date of this letter, we will deny your requests for expedited processing and a fee waiver due to lack of justification. If these are denied, your FOIA request will be processed in the normal time frame based on date of receipt. If there are billable charges that exceed \$50.00 you agreed to pay, you will be required to provide an assurance of payment before you receive a response.

If you have any questions, please contact the Requester Service Center at 202-566-1667 or by email at [hq.foia@epa.gov](mailto:hq.foia@epa.gov).

Sincerely,

Larry F. Gottesman  
National FOIA Officer

# EXHIBIT B-4



**SOUTHEASTERN LEGAL FOUNDATION, INC.**

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

April 27, 2010

**SENT VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED and  
EMAIL TO [hq.foia@epa.gov](mailto:hq.foia@epa.gov)**

No.: 7003 2260 0005 4600 6214

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](mailto:hq.foia@epa.gov)

Re: Expedited Processing and Fee Waiver for Request No. HQ-FOI-01115-10

Dear Mr. Gottesman:

This is in response to your letter dated April 20, 2010 regarding two aspects of the Freedom of Information Act ("FOIA") request ("Request" assigned by your office Request No. HQ-FOI-01115-10). I sent the Request as Executive Director and Chief Legal Counsel of Southeastern Legal Foundation ("SLF")—a non-profit public interest law firm and policy center specializing in the practice of constitutional law, located in Atlanta, Georgia and founded in 1976. Fundamental to our core mission is research into the activities of the Federal Government, which we utilize in a variety of ways discussed *infra*.

In your letter, you sought additional information to aid in your determination of whether of the Request qualified for expedited processing and fee waiver. I shall address each component in turn, and am confident you will be sufficiently satisfied to grant both aspects of the Request.

**I. Expedited Processing**

According to 5 U.S.C. 552(a)(6)(E)(v)(II) a requester demonstrates a "compelling need" for expedited processing when their request is "made by a person primarily engaged in disseminating information, [and can demonstrate an] urgency to inform the public concerning actual or alleged Federal Government activity.

Mr. Larry F. Gottesman  
National Freedom of Information Officer  
Request No. HQ-FOI-01115-10

First, SLF's primary mission is to disseminate information to the public through research into the functioning of all levels of government and, where appropriate, effect public policy through litigation. SLF disseminates information through a number of means including: (i.) through our publicly available website and ancillary websites setup to disseminate information about ongoing litigation projects, e.g. [www.epalawsuit.com](http://www.epalawsuit.com); (ii.) through our mailing lists; (iii.) press releases; and (iv.) published "op-eds" in local and national newspapers and other media. As a nonprofit, SLF has no commercial interests in the information we collect from the Federal Government; our "profit" derives solely from the benefit we provide the public through our research, dissemination and litigation.

The second criteria for "compelling need" required for expedited processing involves the urgency of the request. Here, the urgency of the Request is paramount to its significance. On December 15, 2009 the Environmental Protection Agency ("EPA") published its "Endangerment and Cause or Contribute Finds for Greenhouse Gasses Under Section 202(a) of the Clean Air Act," ("Findings") 74 FR 66496. According to this document, the Findings became effective on January 14, 2010.<sup>1</sup>

Should the regulatory scheme contemplated in the Findings be fully implemented devastating consequences would follow. This regulatory scheme has the potential to cripple the manufacturing and energy sectors of the American economy. Beyond these two vital sectors, the Findings would negatively impact almost every American business and by extension every American consumer and citizen. The Findings draw information and influence from a vast array of scientific data and research, some of which may have been funded (or partially funded) by the EPA. A growing body of evidence exists that the EPA may have relied on faulty science in formulating the Findings.<sup>2</sup> Obviously, any regulatory scheme, which would potentially have the reach and breadth as contemplated by the Findings, must be based on sound science, and the grant determination process must be free from political or undue influence. Finally, other agencies within the Federal Government have recognized SLF's core mission and granted expedited review for our FOIA requests. (See Exhibit "A"). Therefore, for the foregoing reasons, it is imperative the EPA provide expedited processing to the Request.

## II. Fee Waiver

The second component of your April 20, 2010 letter sought further explanation for a fee waiver pursuant to 5 U.S.C 522 (a)(4)(A)(iii)(1994 & Supp. IV 1998). While SLF understands EPA FOIA officers grant or deny fee waiver requests on a case-by-case basis, I would like to refer you to an earlier FOIA Request: Request No. HQ-FOI-00469-10. That request, which the EPA is currently processing, is quite similar to the current Request. Both requests seek information regarding different aspects of the same issue: EPA determinations and decision-making processes involving anthropogenic global warming or climate change. In our previous

<sup>1</sup> Various legal challenges to the Findings exist, for more information see [www.epa.gov/climatechange/endangerment/petitions.html](http://www.epa.gov/climatechange/endangerment/petitions.html) (last viewed on April 20, 2010).

<sup>2</sup> For a detailed discussion of the potentially faulty science see PETITION FOR RECONSIDERATION OF GREENHOUSE GASSES UNDER SECTION 202(a) OF THE CLEAN AIR ACT filed by John Linder et al. with the EPA on December 23, 2009.

Mr. Larry F. Gottesman  
National Freedom of Information Officer  
Request No. HQ-FOI-01115-10

request, we included our rationale, through an appeal, for fee waiver. For your convenience, I have included all the relevant documents involving the former request. See Exhibits "B-G."

The reasoning involved in our former request, which the EPA Office of General Counsel granted after appeal, is completely consistent with this Request. I shall briefly discuss each criterion listed in your April 20, 2010 letter. However, for a more detailed explanation, I respectfully refer you to the relevant exhibits.

The first criterion listed is that the "subject matter must specifically concern identifiable operations or activities of the government." Here the Request centers on EPA decision-making processes involving the awarding of scientific grants to various persons and institutions. Obviously, these grants and denials of grants involve U.S. taxpayer dollars and how the EPA chooses to disperse those dollars for research involves a specific activity of the government.

The second criterion requires the disclosure must be "meaningfully informative in relation to the subject matter of the request." Here the disclosure would elaborate on a perhaps esoteric function of the government: how and under what criteria does the EPA award or deny scientific grants to persons and institutions. As most citizens have likely never filled out such a grant application, any insight into this process would be meaningfully informative to the general public.

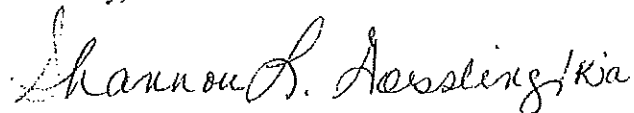
The third and fourth criteria requires that the request contribute "significantly" to the public at large as opposed to the understanding of the requester or a narrow segment of interested persons. SLF will disseminate the information gathered through the Request to the largest audience possible, we shall accomplish this task in a variety of ways including: (i.) through our publicly available website and ancillary websites created for specific litigation; (ii.) mailers and publications we produce throughout each year; and (iii.) any publically available court documents used as evidence in litigation. SLF takes seriously our chartered directive to research and litigate issues of public interest; the dissemination of our work to the general public is one of the most important components of that directive.

The fifth and sixth criteria listed in your April 20, 2010 letter must weigh heavily in favor of a fee waiver. These factors distinguish a requester's motives into commercial/noncommercial rubrics. As stated *supra*, SLF is a nonprofit enterprise with absolutely no commercial interest in the information we would collect through the Request.

Mr. Larry F. Gottesman  
National Freedom of Information Officer  
Request No. HQ-FOI-01115-10

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 expedited processing and fee waiver. However, if you have any questions, please contact me at the telephone number listed below.

Sincerely,

A handwritten signature in cursive script that reads "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

JUL 28 2009



UNITED STATES DEPARTMENT OF COMMERCE  
Economics and Statistics Administration  
U.S. Census Bureau  
Washington, DC 20233-0001  
OFFICE OF THE DIRECTOR

Ms. Shannon L. Goessling  
Southeastern Legal Foundation  
6100 Lake Forest Drive, Suite 520  
Atlanta, GA 30328  
<shannon@southeasternlegal.org>

Dear Ms. Goessling:

This is in response to your request under the Freedom of Information Act (FOIA). We received your request in this office on July 20, 2009. We are processing your request and have assigned tracking number 09-220 to this request. We consolidated your requests to the Department of Commerce, Office of Management and Organization, and the United States Census Bureau into one request, and we are responding for the Department of Commerce and the Census Bureau.

On July 24, 2009, via phone you clarified your request with Hampton Wilson of my staff. Your request is for written and electronic correspondence, memoranda, data, or reports created or received by any employee, agent, or consultant of the United States Census Bureau or the Department of Commerce between January 21, 2009 and June 30, 2009 that discusses:

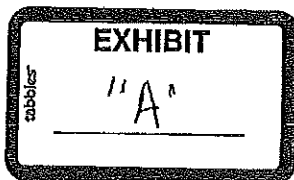
1. incorporating statistical sampling related to the Census Coverage Measurement (CCM) program into the 2010 Census process and/or
2. removing the administration, direction, or supervision of the 2010 Census or the United States Census Bureau from the Department of Commerce to control by White House administrators, staff, or officers.

In accordance with the U.S. Department of Commerce's FOIA regulations, 15 Code of Federal Regulations, Section 4.6, we are granting your request for expedited processing, and your FOIA request will be given priority and processed as soon as practicable. We have granted you a fee waiver for this request by determining that you meet the requirements set forth in the Department of Commerce's FOIA regulations, Code of Federal Regulations Title 15, Part 4.11. If you have any questions about the processing of your request, please contact Hampton Wilson, III of my staff at (301) 763-7103 or <hampton.wilson.iii@census.gov>.

Sincerely,

Mary C. Potter  
Chief, Freedom of Information Act and Information Branch

USCENSUSBUREAU  
Helping You Make Informed Decisions



www.census.gov



**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](mailto:hq.foia@epa.gov)

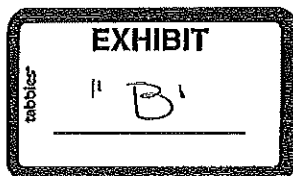
Re: Freedom of Information Act Request

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 (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>)--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

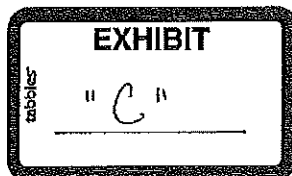
Dear Ms. Goessling:

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](mailto: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](mailto: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](mailto: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](mailto:hq.foia@epa.gov)

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

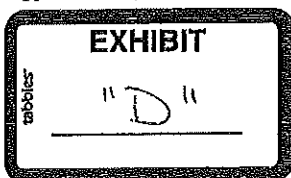
Dear Mr. Gottesman:

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."<sup>1</sup> 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

<sup>1</sup> 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

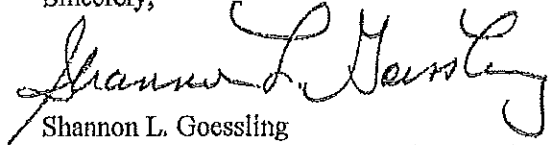
Larry F. Gottesman  
December 28, 2009  
Page 3 of 3

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

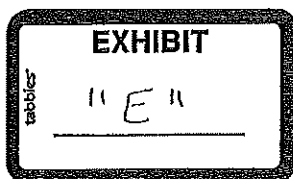
RE: Request Number HQ-FOI-00469-10

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:



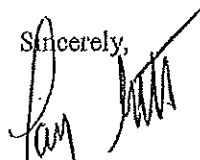
Internet Address (URL) • <http://www.epa.gov>

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", written over a horizontal line.

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

January 22, 2010

**SENT VIA CERTIFIED MAIL**  
**and EMAIL TO [hq.foia@epa.gov](mailto: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](mailto:hq.foia@epa.gov)

Item No.: 7003 2260 0005 4600 6597

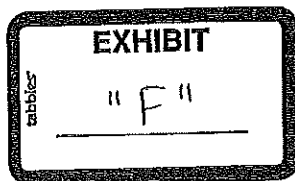
Re: Freedom of Information Act Appeal for Request No. HQ-FOI-00469-10

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,"<sup>1</sup> 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



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January 22, 2010  
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public understanding of government operations or activities.”<sup>2</sup> 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 Findings<sup>3</sup> 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 litigation<sup>4</sup> and through publications. For instance, SLF has conducted extensive

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

<sup>3</sup> 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.

<sup>4</sup> 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).

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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,<sup>5</sup> 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 Regulations<sup>6</sup> ("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,<sup>7</sup> 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."<sup>8</sup> (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

<sup>5</sup> 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."

<sup>6</sup> 40 C.F.R. § 2.107(l)(2)(l)-(vi).

<sup>7</sup> 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.

<sup>8</sup> 40 C.F.R. § 2.107(l)(2)(iii).

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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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

**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*.<sup>12</sup> 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.<sup>13</sup>

<sup>9</sup> The United States Supreme Court discussed the plain meaning rule in *Cammett 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."

<sup>10</sup> See generally, *Chewon v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

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

<sup>12</sup> 581 F. Supp. 2d 491 (S.D.N.Y. 2008).

<sup>13</sup> 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.

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January 22, 2010  
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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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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."<sup>18</sup> 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

<sup>14</sup> Id. at 494-495.

<sup>15</sup> Id. at 498-499.

<sup>16</sup> Id. at 498.

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

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



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

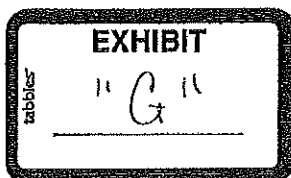
Dear Ms. Goessling:

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 long horizontal flourish extending to the right.

Kevin Miller  
Assistant General Counsel  
General Law Office

cc: HQ FOI Office

# EXHIBIT B-5





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

May 4, 2010

OFFICE OF  
ENVIRONMENTAL INFORMATION

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

RE: Request Number HQ-FOI-01115-10

Dear Ms. Goessling:

This is in response to your request for expedited processing and a waiver of fees for the processing of your Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 request. You are seeking a copy of records regarding grant applications, awards and uses of federal grants for scientific research, etc., regarding climate change, etc.

After reviewing the justification provided, your request for expedited processing is denied. You have not demonstrated that the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

Furthermore, after reviewing your fee waiver justification, your request for a fee waiver is denied. You have not expressed a specific intent to publish or disseminate the information to the general public. In fact you stated that the records will be "publicly available court documents used as evidence in litigation." As a result of you failing to meet the above criteria, I have not addresses the additional criteria in your justification. The US Environmental Protection Agency (EPA) Office of Research and Development (ORD) will be responding to your information request for the agency. However, prior to processing your request, they will provide you with an estimate if the cost exceeds \$25.00. After they receive your assurance of payment they will process your request.

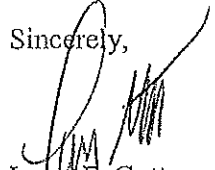
You may appeal this denial to the National Freedom of Information Office, US EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (US Postal Service only), fax: (202) 566-2147, e-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). Only items mailed through the US Postal Service may be delivered to

Ms. Shannon Goessling  
May 4, 2010  
Page 2

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 request number 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 at (202) 566-1667.

Sincerely,



Larry F. Gottesman  
National FOIA Officer

# EXHIBIT B-6



**SOUTHEASTERN LEGAL FOUNDATION, INC.**

2255 SEWELL MILL ROAD • SUITE 320 • MARIETTA, GEORGIA 30062  
(770) 977-2131 • FAX (770) 977-2134 • [southeasternlegal.org](http://southeasternlegal.org)

June 3, 2010

**SENT VIA CERTIFIED MAIL**  
**and EMAIL TO [hq.foia@epa.gov](mailto: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](mailto:hq.foia@epa.gov)

No. 7003 2260 0005 4600 6108

Re: Freedom of Information Act Appeal for Request No. HQ-FOI-01115-10

Dear FOIA Appeals Officer:

This letter is an appeal of the denial of Southeastern Legal Foundation's ("SLF") expedited processing and fee waiver requests for Freedom of Information Act ("FOIA") Request No. HQ-FOI-01115-10 ("Request"). SLF is an organization primarily engaged in the dissemination of information and the subject of the Request portends an urgency to inform the public about Federal Government activity, therefore expedited processing is proper. In addition, 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,"<sup>1</sup> our Request sought a fee waiver. In a letter dated May 4, 2010, Mr. Larry F. Gottesman, EPA National Freedom of Information Act Officer denied our request for both expedited processing and fee waiver. (See Exhibit "A"). Mr. Gottesman's denial of the expedited processing and fee waiver requests prompted this appeal.

**A. Mr. Gottesman Based The Denial Of Expedited Processing On The Wrong Standard; Furthermore, Under The Correct Standard Expedited Processing Is Justified.**

In denying the Request's expedited processing plea, Mr. Gottesman's May 4, 2010 letter stated, "You have not demonstrated that the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." While Mr. Gottesman is correct in that is one justification for expedited processing, he fails to understand: (i.) imminent threat is only one justification for expedited processing; and (ii.) SLF based our request for expedited processing on the other—government activity.

Freedom of Information Act Appeal  
January 22, 2010  
Page 2 of 7

The Code of Federal Regulations (“CFR”) 40 CFR 2.104 articulates the EPA’s interpretation of FOIA regulations for expedited processing. Section 2.104(e)(ii) specifically articulates “An 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,” as a valid justification for expedited processing. Apparently, Mr. Gottesman did not consider this component of EPA regulations, even though we specifically directed him to it.

First, SLF’s primary mission is to disseminate information to the public through research into the functioning of all levels of government and, where appropriate, affect public policy through litigation. SLF disseminates information through a number of means including: (i.) through our publicly available website and ancillary websites setup to disseminate information about ongoing litigation projects, e.g. [www.epalawsuit.com](http://www.epalawsuit.com); (ii.) through our mailing lists; (iii.) press releases; and (iv.) published “op-eds” in local and national newspapers and other media. As a nonprofit, SLF has no commercial interests in the information we collect from the Federal Government; our “profit” derives solely from the benefit we provide the public through our research, dissemination and litigation.

The second component of “compelling need” recognized in the FOIA focuses on the “urgency to inform” the public about government activity. Undoubtedly the subject of the Request: grant applications and other processes related to the EPA’s involvement with “anthropogenic global warming or climate change” research, and how that research is then used by the Federal Government to support agency rulemaking and laws constituted “activity of the Federal Government.” Thus, the only remaining issue under FOIA is the “urgency” of the Request. The D.C. Circuit Court (“Court”) analyzed the legislative history of the FOIA and constructed two relevant criteria to satisfy compelling need, the request must exhibit: (i.) a matter of current exigency to the American public; and (ii.) a compromising of a significant recognized interest.<sup>2</sup> In addition, the Court also mentioned the credibility of the requester as a possible additional factor, perhaps a tiebreaker in close cases. For the purposes of this appeal, we are happy to construct our reasoning within the parameters established by the Court.

The requests centered on grants, research and other documents related to “anthropogenic global warming or climate change.” While the veracity of this scientific theory is debatable, the action taken by the Federal Government in response to this alleged threat is not. On December 15, 2009 the EPA published its “Endangerment and Cause or Contribute Finds for Greenhouse Gasses Under Section 202(a) of the Clean Air Act,” (“Findings”) 74 FR 66496. According to this document, the Findings became effective on January 14, 2010.<sup>3</sup>

Should the regulatory scheme contemplated in the Findings be fully implemented, devastating consequences would follow. This regulatory scheme has the potential to cripple the manufacturing and energy sectors of the American economy. Beyond these two vital sectors, the Findings would negatively impact almost every American business and by extension every

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<sup>2</sup> *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001).

<sup>3</sup> Various legal challenges to the Findings exist, for more information see [www.epa.gov/climatechange/endangerment/petitions.html](http://www.epa.gov/climatechange/endangerment/petitions.html) (last viewed on April 20, 2010).

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American consumer and citizen. The potential consequences to both the American economy and its citizens demonstrate the exigency of the Request. The Findings draw information and influence from a vast array of scientific data and research, some of which may have been funded (or partially funded) by the EPA. A growing body of evidence exists that the EPA may have relied on faulty science in formulating the Findings.<sup>4</sup> Obviously, any regulatory scheme, which would potentially have the reach and breadth as contemplated by the Findings, or any other regulations relying on EPA funded research, must be based on sound science, and the grant determination process must be free from political or undue influence. Ensuring the American public the grant and research process in producing and supporting the “anthropogenic global warming or climate change” regulations are free from taint comprises a significant and recognized interest of the utmost importance.

Thus unlike *Al-Fayed*, which involved a request concerning mainly private interests, the Request more closely aligns with *Edmonds v. FBI*.<sup>5</sup> There, the court recognized that issues (i.) that receive extensive media coverage; and (ii.) relate to “possible questions about the government's integrity which affect public confidence,”<sup>6</sup> are prime candidates for expedited processing. Here EPA involvement with “anthropogenic global warming or climate change” – which receives near daily media coverage— and potentially tainted science being used by the Federal Government to impose massive regulatory schemes, qualifies as exigent and significant.

Finally, as to credibility, SLF is a non-profit public interest law firm and policy center specializing in the practice of constitutional law, located in Atlanta, Georgia and founded in 1976. Fundamental to our core mission is to conduct research into the activities of the Federal Government, which we utilize in a variety of ways as discussed *supra*. SLF has extensive experience not only making FOIA requests, but also analyzing and incorporating that information into the materials we produce. Currently, SLF is conducting research, and has ongoing requests pending with the Department of Commerce, EPA, and National Science Foundation among others. These agencies recognize SLF's mission and the work we perform and almost always grant our requests for fee waivers and expedited processing without us having to resort to litigation. (For example see Exhibit “B”).

**B. 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 May 4, 2010 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

<sup>4</sup> For a detailed discussion of the potentially faulty science see PETITION FOR RECONSIDERATION OF GREENHOUSE GASSES UNDER SECTION 202(a) OF THE CLEAN AIR ACT filed by John Linder et al. with the EPA on December 23, 2009.

<sup>5</sup> 2002 U.S. Dist. LEXIS 26578 (D.D.C. Dec. 3, 2002).

<sup>6</sup> *Id.* quoting 28 C.F.R. § 16.5(d)(1)(iv).

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requester or a narrow segment of interested persons” and it “must contribute ‘significantly’ to public understanding of government operations or activities.”<sup>7</sup> 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 April 4, 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.

**C. 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. 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 Findings,<sup>8</sup> or other ways the EPA is involved funding research into “anthropogenic global warming and climate change.” 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 litigation<sup>9</sup> and through publications. As noted *supra*, most government agencies have granted requests for fee waivers without litigation.

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<sup>7</sup> 5 U.S.C. 552(a)(4)(A)(iii)(1994 & Supp. IV 1998).

<sup>8</sup> 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.

<sup>9</sup> 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).

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**D. 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.<sup>10</sup> In fact, the actual standard, as outlined by the EPA and published in the CFR is not nearly as demanding as Mr. Gottesman’s own apocryphal standard. The CFR represents the official EPA interpretation of the FOIA fee waiver requirements,<sup>11</sup> and therefore is more authoritative than Mr. Gottesman’s May 4, 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.<sup>12</sup> (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 May 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 Finding’s implications. SLF will disseminate this information through the channels discussed *supra*.

**E. Mr. Gottesman’s Denial Employed An Incorrect Interpretive Method In Evaluating The Six Criteria Utilized By The EPA.**

In Mr. Gottesman’s May 4, 2010 letter, he asserted, “As a result of you failing to meet the above criteria, have not addresses [*sic*] the additional criteria in your justification.” Mr.

<sup>10</sup> 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.”

<sup>11</sup> 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.

<sup>12</sup> 40 C.F.R. § 2.107(l)(2)(iii).



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Gottesman posited 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

**F. 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*.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup> 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

<sup>13</sup> 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.”

<sup>14</sup> See generally, *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

<sup>15</sup> See generally, *Friends of the Coast Fork v. United States DOI*, 110 F.3d 53, 55 (9<sup>th</sup> Cir. 1997) (admonishing the federal agency involved for finding one fee waiver factor dispositive when a balancing of all factors was required).

<sup>16</sup> 581 F. Supp. 2d 491 (S.D.N.Y. 2008).

<sup>17</sup> 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.

<sup>18</sup> *Id.* at 494-495.

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general public.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

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."<sup>22</sup> 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.

#### **G. Conclusion**

For all the reasons expressed above, SLF requests the U.S. EPA FOIA and Privacy Branch overturn Mr. Gottesman's denial of expedited processing and 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

---

<sup>19</sup> Id. at 498-499.

<sup>20</sup> Id. at 498.

<sup>21</sup> *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1179 (10th Cir. 2005).

<sup>22</sup> 132 Cong. Rec. 27, 190 (1986) (Sen. Leahy) quoted in *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003).



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

May 4, 2010

OFFICE OF  
ENVIRONMENTAL INFORMATION

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

RE: Request Number HQ-FOI-01115-10

Dear Ms. Goessling:

This is in response to your request for expedited processing and a waiver of fees for the processing of your Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 request. You are seeking a copy of records regarding grant applications, awards and uses of federal grants for scientific research, etc., regarding climate change, etc.

After reviewing the justification provided, your request for expedited processing is denied. You have not demonstrated that the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

Furthermore, after reviewing your fee waiver justification, your request for a fee waiver is denied. You have not expressed a specific intent to publish or disseminate the information to the general public. In fact you stated that the records will be "publicly available court documents used as evidence in litigation." As a result of you failing to meet the above criteria, I have not addresses the additional criteria in your justification. The US Environmental Protection Agency (EPA) Office of Research and Development (ORD) will be responding to your information request for the agency. However, prior to processing your request, they will provide you with an estimate if the cost exceeds \$25.00. After they receive your assurance of payment they will process your request.

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: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). Only items mailed through the US Postal Service may be delivered to

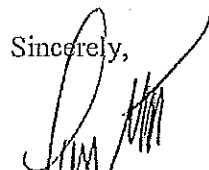
**EXHIBIT A**

Ms. Shannon Goessling  
May 4, 2010  
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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 request number 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 at (202) 566-1667.

Sincerely,



Larry F. Gottesman  
National FOIA Officer



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Economics and Statistics Administration**  
**U.S. Census Bureau**  
Washington, DC 20233-0001  
OFFICE OF THE DIRECTOR

JUL 28 2009

Ms. Shannon L. Goessling  
Southeastern Legal Foundation  
6100 Lake Forest Drive, Suite 520  
Atlanta, GA 30328  
<shannon@southeasternlegal.org>

Dear Ms. Goessling:

This is in response to your request under the Freedom of Information Act (FOIA). We received your request in this office on July 20, 2009. We are processing your request and have assigned tracking number 09-220 to this request. We consolidated your requests to the Department of Commerce, Office of Management and Organization, and the United States Census Bureau into one request, and we are responding for the Department of Commerce and the Census Bureau.

On July 24, 2009, via phone you clarified your request with Hampton Wilson of my staff. Your request is for written and electronic correspondence, memoranda, data, or reports created or received by any employee, agent, or consultant of the United States Census Bureau or the Department of Commerce between January 21, 2009 and June 30, 2009 that discusses:

1. incorporating statistical sampling related to the Census Coverage Measurement (CCM) program into the 2010 Census process and/or
2. removing the administration, direction, or supervision of the 2010 Census or the United States Census Bureau from the Department of Commerce to control by White House administrators, staff, or officers.

In accordance with the U.S. Department of Commerce's FOIA regulations, 15 Code of Federal Regulations, Section 4.6, we are granting your request for expedited processing, and your FOIA request will be given priority and processed as soon as practicable. We have granted you a fee waiver for this request by determining that you meet the requirements set forth in the Department of Commerce's FOIA regulations, Code of Federal Regulations Title 15, Part 4.11. If you have any questions about the processing of your request, please contact Hampton Wilson, III of my staff at (301) 763-7103 or <hampton.wilson.iii@census.gov>.

Sincerely,

A handwritten signature in cursive script that reads "Mary C. Potter".

Mary C. Potter  
Chief, Freedom of Information Act and Information Branch

**EXHIBIT B**

U S C E N S U S B U R E A U

Helping You Make Informed Decisions

www.census.gov

# EXHIBIT B-7



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

OFFICE OF  
GENERAL COUNSEL

June 8, 2010

Shannon Goessling  
Southwestern Legal Foundation, Inc.  
6100 Lake Forrest Drive, N.W.  
Suite 520  
Atlanta, GA 30328

Re: Freedom of Information Act Appeal HQ--FOI-01115-10-A (HQ-APP-00145-10)

Dear Ms. Goessling:

This letter is being sent to acknowledge receipt of your FOIA appeal received in the Office of General Counsel on June 7, 2010.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Bruce".

Barbara Bruce  
FOIA Specialist  
General Law Office

# EXHIBIT B-8



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

From: Riley.Lois@epamail.epa.gov [mailto:Riley.Lois@epamail.epa.gov]  
Sent: Friday, February 04, 2011 10:40 AM  
To: Shannon Goessling  
Subject: EPA FOIA number HQ-FOI-01115-10

Thank you for your phone call in which you agreed to extending the due date for the subject FOIA to February 28, 2011.

Lois Riley  
National Center for Environmental Research (NCER)  
Office of Research and Development (ORD)  
US Environmental Protection Agency (US EPA)

Phone: 703-347-8075  
Email: riley.lois@epa.gov

# EXHIBIT B-9

**From:** Shannon Goessling  
**Sent:** Friday, March 11, 2011 11:41 AM  
**To:** riley.lois@epa.gov  
**Cc:** Jovette Ayers  
**Subject:** Deadline Extension EPA FOIA REF: HQ-FOI-01115-10  
**Importance:** High

Ms. Riley,

An extension was granted until February 28, 2011 by Southeastern Legal Foundation, Inc. to EPA for it to respond to the above-referenced FOIA request. It is now March 11, 2011, and we have received nothing from you or the EPA – 11 days past the agreed upon extension.

Please advise me on the status of the request before end of business today. Please reply all, so that Ms. Ayers, my paralegal, will receive your response as well.

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](http://www.southeasternlegal.org)  
[www.epalawsuit.org](http://www.epalawsuit.org)

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

Confidentiality Notice:

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return e-mail or at 770-977-2131 and destroy the original transmission and its attachments without reading or saving in any manner.

New IRS rules restrict written federal tax advice from lawyers and accountants. We include this statement in all outbound emails because even inadvertent violations may be penalized. Nothing in this message is intended to be used, or may be used, to avoid any penalty under federal tax laws. This message was not written to support the promotion or marketing of any transaction. Please contact a tax attorney to obtain formal written advices on tax issues.

# EXHIBIT B-10

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

From: Riley.Lois@epamail.epa.gov [mailto:Riley.Lois@epamail.epa.gov]

Sent: Tuesday, March 15, 2011 2:29 PM

To: Shannon Goessling

Subject: Re: Deadline Extension EPA FOIA REF: HQ-FOI-01115-10

We apologize for the delay in completing your FOIA request. During our processing phase we determined that the request is more complex than initially perceived, and that the search, review and analysis of records would require more time and effort than originally planned.

Our search, review and analysis of of records continues. At this point, unfortunately, it is difficult to provide you with a definitive completion date. Our records review procedure should be completed in about a week. We will prepare an appropriate response and send the response package through our management for signature.

We can provide you with an additional update at the time our records review is completed. Please let me know of any questions/comments you may have.

Thank you

Lois Riley

# EXHIBIT B-11

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

From: Shannon Goessling  
Sent: Tuesday, March 15, 2011 2:36 PM  
To: Riley.Lois@epamail.epa.gov  
Cc: Jovette Ayers  
Subject: RE: Deadline Extension EPA FOIA REF: HQ-FOI-01115-10

Ms. Riley,

Given the passage of the deadline and what appears to be an additional delay, we request that the processing of the request be done in phases, i.e. send on for approval and delivery to us the records already reviewed and retrieved. We would like to begin our review, analysis and dissemination of the information, as appropriate, as soon as possible.

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](http://www.southeasternlegal.org)  
[www.epalawsuit.org](http://www.epalawsuit.org)  
Please make note of the new address and numbers for SLF!

Confidentiality Notice:

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return e-mail or at 770-977-2131 and destroy the original transmission and its attachments without reading or saving in any manner.

New IRS rules restrict written federal tax advice from lawyers and accountants. We include this statement in all outbound emails because even inadvertent violations may be penalized. Nothing in this message is intended to be used, or may be used, to avoid any penalty under federal tax laws. This message was not written to support the promotion or marketing of any transaction. Please contact a tax attorney to obtain formal written advices on tax issues.

# EXHIBIT B-12



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

From: Riley.Lois@epamail.epa.gov [mailto:Riley.Lois@epamail.epa.gov]  
Sent: Tuesday, March 22, 2011 12:24 PM  
To: Shannon Goessling  
Cc: Jovette Ayers  
Subject: RE: Deadline Extension EPA FOIA REF: HQ-FOI-01115-10

Thank you for your response. We think your recommendation that we respond to your FOIA request in phases is an excellent approach.

There were five items in your FOIA request. This email focuses on items 1, 3 and 5 only. Attached is an interim response (website) and a request to you for more specifics on these items in order for us to determine if we have additional data.

Thank you

Lois

(See attached file: INTERIM RESPONSE TO FOIA 01115.docx)

**INTERIM RESPONSE TO FOIA 01115-10**

1. Grant applications seeking federal funds for any and all research on global climate change...

Grant applications for successful applications that received awards are available. Successful awards are available on our website by visiting the following URL on the worldwide web:

[http://cfpub.epa.gov/ncer\\_abstracts/index.cfm/fuseaction/search.welcome](http://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/search.welcome)

3. Accompanying and subsequent correspondence between your agency and grant applicants or recipients...

Please specify the additional information and the specific successful awards for which the information is requested after reviewing the substantial publicly available information via the internet obtainable via the website provided under Item 1.

5. Any and all documents, referencing, describing, or creating...

Please specify the additional information and the specific successful awards for which the information is requested after reviewing the substantial publicly available information via the internet obtainable via the website provided under Item 1.

# EXHIBIT B-13

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**From:** Jovette Ayers  
**To:** Riley,Lois@epamail.epa.gov  
**Cc:** Shannon Goessling  
**Sent:** 7/25/2011 12:46PM  
**Subject:** RE: EPA FOIA REF: HQ-FO1-01115-10

Dear Ms. Riley,

Please see Ms. Goessling's response below:

Ms. Riley,

Thank you for the opportunity to delay responding due to my vacation to the newest request for clarification from EPA with regard to our FOIA request filed April 12, 2019. Fourteen months after we filed the FOIA request and have been forced to go back and forth about fee waivers and whether it will be expedited, we received your request for clarification and reference to a website that supposedly contains much of the information (June 23, 2011). The singular question that is at the forefront of our response is when did the website to which you referred us go live on the internet for EPA? Any substantive response will be delayed until that information is provided.

We are further requesting that this FOIA request remain open until such time as we notify you in writing that we have obtained all of the information we originally requested or need.

Thank you,  
Shannon

K. Jovette Ayers  
Paralegal  
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](http://www.southeasternlegal.org)  
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-----Original Message-----

From: Shannon Goessling  
Sent: Thursday, July 21, 2011 4:55 PM  
To: Riley.Lois@epamail.epa.gov  
Cc: Jovette Ayers  
Subject: Re: EPA FOIA REF: HQ-FO1-01115-10

Lois,

Any chance I can reply on Monday, July 25? Jovette and I didn't realize we scheduled the reply when we were both on vacation. I would really appreciate it. We are both back on Monday.

Shannon

Shannon L. Goessling  
Southeastern Legal Foundation

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

From: Riley.Lois@epamail.epa.gov [mailto:Riley.Lois@epamail.epa.gov]  
Sent: Wednesday, June 29, 2011 09:02 AM  
To: Shannon Goessling  
Cc: Jovette Ayers  
Subject: Re: EPA FOIA REF: HQ-FO1-01115-10

Thank you for your email dated June 24, 2011. Your proposed 4-week extension of the deadline date is acceptable to us. We have extended the deadline to Friday, July 22, 2011.

Lois Riley

From: Shannon Goessling <Shannon@southeasternlegal.org>  
To: Lois Riley/DC/USEPA/US@EPA  
Cc: Jovette Ayers <jayers@southeasternlegal.org>  
Date: 06/24/2011 11:25 AM  
Subject: Re: EPA FOIA REF: HQ-FO1-01115-10

Ms. Riley,

Both, my paralegal and I do not recall getting your referenced email. But, upon a search of the received emails on that date, it was located. We have 2 pressing litigation matters that will draw our resources for the next 3 weeks. Following that, we will put our attention to following-up on this request. Please confirm your receipt and acceptance of this extension (4 weeks) to respond and evaluate and provide, as necessary, the additional information being requested to

fulfill this phase of the above-referenced FOIA request.

If you have any questions, please let me know.

Thank you,  
Shannon

Shannon L. Goessling  
Southeastern Legal Foundation

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

From: Riley,Lois@epamail.epa.gov [mailto:Riley.Lois@epamail.epa.gov]  
Sent: Thursday, June 23, 2011 01:13 PM  
To: Shannon Goessling  
Cc: Jovette Ayers  
Subject: EPA FOIA REF: HQ-FO1-01115-10

We have not received a response regarding the information we sent to you by email dated March 22, 2011. That email also requested additional clarification of your FOIA request, identified above. It is important that we hear from you soon. Otherwise, we will need to begin administrative close-out of your FOIA.

Lois Riley

# EXHIBIT B-14

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**From:** Jovette Ayers  
**To:** Riley.Lois@epamail.epa.gov  
**Cc:** Shannon Goessling  
**Sent:** 8/05/2011 11:29AM  
**Subject:** EPA FOIA REF: HQ-FO1-01115-10

Ms. Riley,

We are following-up on the email Ms. Goessling sent on Monday, July 25, 2011, inquiring about the website you referred to us containing information responsive to our request. We would like to know when we can expect a response to that inquiry, as well as, whether you agree to keep the above-referenced request open, as requested.

Sincerely,

Jovette Ayers

K. Jovette Ayers

Paralegal

Southeastern Legal Foundation, Inc.

2255 Sewell Mill Road

Suite 320

Marietta, GA 30062

Phone No.: (770) 977-2131

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**From:** Jovette Ayers  
**To:** Riley.Loïs@epamail.epa.gov  
**Cc:** Shannon Goessling  
**Sent:** 8/16/2011 3:31PM  
**Subject:** EPA FOIA REF: HQ-FO1-01115-10

Dear Ms. Riley,

We are following-up on the email Ms. Goessling sent on Monday, July 25, 2011 and the email sent on Friday, August 5, 2011, inquiring about the website you referred us to containing information responsive to our request. We would like to know when we can expect a response to that inquiry, as well as, whether you agree to keep the above-referenced request open, as requested.

Sincerely,

Jovette Ayers

K. Jovette Ayers

Paralegal

Southeastern Legal Foundation, Inc.

2255 Sewell Mill Road

Suite 320

Marietta, GA 30062

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