

# EXHIBIT C-1



**SOUTHEASTERN LEGAL FOUNDATION, INC.**

2255 SEWELL MILL ROAD • SUITE 320 • MARIETTA, GEORGIA 30062  
(770) 977-2131 • FAX (770) 977-2134 • www.southeasternlegal.org

November 22, 2013

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

No. 7003 2260 0005 4600 5903

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's (EPA) Freedom of Information Act (FOIA) Annual Reports for the fiscal years 2009 through 2012. Pursuant to our investigation, we request that you provide us with any documents including, but not limited to:

1. Written and electronic documents, data, memoranda, or reports created by any employee, agent, or consultant of the EPA that reflects the underlying data of, or was used, created or compiled in the preparation of, the following sections of the EPA's FOIA Annual Report for October 1, 2008 through September 30, 2009:
  - a. Section V.A. FOIA Requests – Received, Processed and Pending FOIA Requests.
  - b. Section V.B.(1). FOIA Requests – Disposition of FOIA Requests All Processed Requests.
  - c. Section V.B.(2). FOIA Requests – Disposition of FOIA Requests Other Reasons for Full Denials Based on Reasons Other than Exemptions.
  - d. Section V.B.(3). FOIA Requests – Disposition of FOIA Requests Number of Times Exemptions Applied.
  - e. Section VI.A. Administrative Appeals of Initial Determinations of FOIA Requests – Received, Processed and Pending Administrative Appeals.
  - f. Section VI.B. Administrative Appeals of Initial Determinations of FOIA Requests – Disposition of Administrative Appeals All Processed Appeals.
  - g. Section VI.C.(1). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Number of Times Exemptions Applied.

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- h. Section VI.C.(2). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Reasons Other than Exemptions.
  - i. Section VI.C.(3). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Other Reasons.
  - j. Section VI.C.(4). Administrative Appeals of Initial Determinations of FOIA Requests – Response Time for Administrative Appeals.
  - k. Section VI.C.(5). Administrative Appeals of Initial Determinations of FOIA Requests – Ten Oldest Pending Administrative Appeals.
  - l. Section VII.A. FOIA Requests: Response Time for Processed and Pending Requests – Processed Requests Response Time for All Processed Perfected Requests.
  - m. Section VII.B. FOIA Requests: Response Time for Processed and Pending Requests – Processed Requests Response Time for Perfected Requests in Which Information Was Granted.
  - n. Section VII.E. FOIA Requests: Response Time for Processed and Pending Requests – Processed Requests Ten Oldest Pending Perfected Requests.
  - o. Section VIII.B. Requests for Expedited Processing and Requests for Fee Waiver Requests for Fee Waiver.
  - p. Section XII.A. Backlogs, Consultations, and Compilations – Backlogs of FOIA Requests and Administrative Appeals.
2. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2008 through September 30, 2009 identified in Items 1.a. through 1.p. of this request.
  3. Written and electronic documents, data, memoranda, or reports created by any employee, agent, or consultant of the EPA that reflects the underlying data of, or was used, created or compiled in the preparation of, the following sections of the EPA's FOIA Annual Report for October 1, 2009 through September 30, 2010:
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4. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2009 through September 30, 2010 identified in Items 3.a. through 3.p. of this request.
5. Written and electronic documents, data, memoranda, or reports created by any employee, agent, or consultant of the EPA that reflects the underlying data of, or was used, created or compiled in the preparation of, the following sections of the EPA's FOIA Annual Report for October 1, 2010 through September 30, 2011:
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6. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2010 through September 30, 2011 identified in Items 5.a. through 5.p. of this request.
7. Written and electronic documents, data, memoranda, or reports created by any employee, agent, or consultant of the EPA that reflects the underlying data of, or was used, created or compiled in the preparation of, the following sections of the EPA's FOIA Annual Report for October 1, 2010 through September 30, 2011:
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8. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2011 through September 30, 2012 identified in Items 7.a. through 7.p. of this request.

This is a request for documents 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.

National Freedom of Information Officer  
November 22, 2013  
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Sincerely,

  
Shannon L. Goessling  
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road, Suite 320  
Marietta, GA 30062  
(770) 977-2131

# EXHIBIT C-2





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

OFFICE OF  
ENVIRONMENTAL INFORMATION

November 27, 2013

Shannon L. Goessling  
Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road  
Suite 320  
Marietta, GA 30062

Dear Mr. Goessling:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request that you submitted to the U.S. Environmental Protection Agency (EPA) and was received on November 26, 2013. The tracking number for your request is EPA-HQ-2013-001489.

You are now able to track the status of your request and file future requests through FOIAonline (a multi-agency shared service FOIA solution) available on the Web at <https://foiaonline.regulations.gov>. FOIAonline allows you to submit a request as a registered user or as a guest. As a registered user, you may easily organize and view all of your requests, quickly create new requests and modify, withdraw or appeal a request online.

If you have any questions, please contact EPA's FOIA Requester Service Center at 202-566-1667.

Sincerely,

*Larry F. Gottesman*

National FOIA Officer

# EXHIBIT C-3



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

November 27, 2013

OFFICE OF  
ENVIRONMENTAL INFORMATION

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

RE: Request Number EPA-HQ-2014-001493

Dear Ms. Goessling:

This is in response to your request for a fee waiver in connection with your Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency (EPA) seeking a copy of records regarding EPA's Freedom of Information Act Annual Reports for the fiscal years 2009 through 2012.

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 [FOIA\\_HQ@epa.gov](mailto:FOIA_HQ@epa.gov). If we do not hear from you within seven days from the date of this letter, we will deny your request for a waiver of fees based on insufficient justification.

If you have any questions, please contact the Requester Service Center at [FOIA\\_HQ@epa.gov](mailto:FOIA_HQ@epa.gov) or call us at 202-566-1667.

Sincerely,

*V. Warden for*  
Larry F. Gottesman  
National FOIA Officer

# EXHIBIT C-4



**SOUTHEASTERN LEGAL FOUNDATION, INC.**

2255 SEWELL MILL ROAD • SUITE 320 • MARIETTA, GEORGIA 30062  
(770) 977-2131 • FAX (770) 977-2134 • www.southeasternlegal.org

December 9, 2013

**VIA U.S. MAIL & EMAIL (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

RE: FOIA Request No. EPA-HQ-2014-001493

Dear Mr. Gottesman:

This letter is in response to your letter dated November 27, 2013, and received via electronic mail on December 5, 2013, which discussed criteria the Environmental Protection Agency (EPA) uses in evaluating the appropriateness of fee waivers for Freedom of Information Act (FOIA) requests. Southeastern Legal Foundation (SLF) is confident that our FOIA Request No. EPA-HQ-2014-001493 (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, this letter addresses how the Request meets the criteria listed in your November 27, 2013 letter.

As a preliminary statement, and as noted in the Request, 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. On several other occasions, SLF has conducted research and prepared similar FOIA requests relating to the functioning of the federal government, including FOIA requests to the EPA; with one unique exception, 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 Request inquires into the detailed data supporting specific information reported by the EPA in its annual FOIA reports for fiscal years 2009 through 2012, including but not limited to the number of days it took the EPA to respond to a FOIA request and the number of FOIA requests that the EPA granted or denied. Given that responding to FOIA requests is an identifiable operation or activity of federal agencies, any request for information

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<sup>1</sup> 5 U.S.C. § 552((4)(A)(iii) (1994 & Supp. IV 1998).

Mr. Larry Gottesman  
December 9, 2013  
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regarding how the EPA responded to FOIA requests is a request for information regarding an identifiable operation or activity of the EPA.

The second criterion requires that the requested material “must be meaningfully informative in relation to the subject matter of the request.” The Request seeks to discover the underlying data used by the EPA to compile its annual FOIA reports for fiscal years 2009 through 2012. Any documents that articulate this information are of great public interest and are meaningfully informative in relation to the subject matter of the Request - especially given the importance that the government places on these annual FOIA reports and the continued public discussion of the importance of governmental transparency.

The third criterion requires that 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.” This Request satisfies this requirement for a litany of reasons. 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.” Information regarding the EPA’s responses to FOIA requests such as delays in response time, denials of requests and exemption claims, have far-reaching consequences and affect every single American. In stressing the importance of FOIA, the current President has stated: “In our democracy, the FOIA, which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability *is in the interest of the Government and the citizenry alike.*”<sup>2</sup> Thus, as the President himself proclaimed, the data underlying the information reported on the EPA’s annual FOIA report affects every citizen.

The fourth criterion requires that the “disclosure must contribute ‘significantly’ to public understanding of government operations or activities.” The EPA’s annual FOIA reports provide only a summary of how the EPA responded to FOIA requests made by the public. Disclosure of the supporting data will contribute significantly to the public’s understanding of how the EPA responds to the public’s FOIA requests, including information such as which FOIA requests were granted and which ones were denied, which FOIA requests were responded to quickly and which ones took years to complete, and which FOIA requestors were granted fee waivers and which ones were not. All of this information will significantly contribute to the public’s understanding of a key EPA operation and activity.

With respect to the fifth and sixth criteria, SLF has absolutely no commercial or financial interest in the requested information, and would receive no pecuniary benefit from the information sought. As such, these criteria should weigh heavily in favor of granting SLF’s request for a fee waiver.

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<sup>2</sup> Memorandum of Jan. 21, 2009, 74 Fed. Reg. Vol. 15 (Jan. 26, 2009) (emphasis added).

Mr. Larry Gottesman  
December 9, 2013  
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Thank you for your time and consideration in this matter. We trust that this information will be sufficient as you evaluate the merits of the requested fee waiver. Also, please note that SLF did not receive your November 27, 2013 letter until December 5, 2013, when Vivian Warden provided it to us via electronic mail. To date, SLF has not yet received your November 27, 2013 letter via U.S. Mail. Please ensure that your records reflect our correct address: 2255 Sewell Mill Road, Suite 320, Marietta, Georgia 30062.

If you have any question, please contact me at the telephone number listed below.

Sincerely,



Shannon L. Goessling  
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road, Suite 320  
Marietta, Georgia 30062  
(770) 977-2131

cc: Vivian Warden (via e-mail, [Warden.Vivian@epa.gov](mailto:Warden.Vivian@epa.gov))



# EXHIBIT C-5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

December 12, 2013

Ms. K. Jovette Ayers  
Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road, Suite 320  
Marietta, GA 30062

OFFICE OF  
ENVIRONMENTAL INFORMATION

RE: Request Number EPA-HQ-2014-001493

Dear Ms. Ayers:

This is in response to your request for a waiver of fees in connection with your Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency (EPA) seeking a copy of records regarding EPA's Freedom of Information Act Annual Reports for the fiscal years 2009 through 2012.

We have reviewed your fee waiver justification and based on the information provided, we are denying your request for a fee waiver. You have failed to demonstrate that the release of the information requested significantly increases the public understanding of government operations or activities. Accordingly, there is no need for this office to address the remaining prongs of the fee waiver criteria. If the estimated cost exceeds \$50.00, we will contact you regarding the cost of processing your request and seek an assurance of payment. We will be unable to process your request until they receive your written assurance of payment.

Under the FOIA, you have the right to appeal this determination to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, NW (2822T), Washington, DC 20460 (U.S. Postal Service Only), E-mail: FOIA\_HQ@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, 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 FOI number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal." Should you choose to appeal this determination, please be sure to fully address all factors required by EPA's FOIA Regulations, located at 40 C.F.R. § 2.107(l) in your appeal. If you have any questions concerning this determination please contact me at (202) 566-1667.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry F. Gottesman".

Larry F. Gottesman  
National FOIA Officer

# EXHIBIT C-6



**SOUTHEASTERN LEGAL FOUNDATION, INC.**

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

January 10, 2013

**VIA E-MAIL (FOIA\_HQ@epa.gov)**  
National Freedom of Information Office  
U.S. EPA, FOIA and Privacy Branch  
1200 Pennsylvania Avenue, NW (2882T)  
Washington, DC 20460

Re: Appeal of Denial of Fee Waiver Request; FOIA Request No. EPA-HQ-2014-001493

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. EPA-HQ-2014-001493 (Request). As a non-profit organization seeking information from the Environmental Protection Agency (EPA) that is likely to contribute significantly to public understanding of the operations or activities of the government and not primarily [for our] commercial interest, our Request sought a fee waiver. (Exhibit "A"). In a letter dated November 27, 2013 and received on December 5, 2013, Mr. Larry F. Gottesman, EPA National FOIA Officer, responded to the fee waiver request by outlining the six criteria the EPA utilizes to evaluate the merits of such request. (Exhibit "B"). In a December 9, 2013 letter, we articulated our justifications for a fee waiver – step-by-step – according to the criteria Mr. Gottesman presented in his November 27 letter. (Exhibit "C"). Mr. Gottesman denied SLF's fee waiver request in a letter dated December 12, 2013. (Exhibit "D"). Mr. Gottesman's denial of the fee waiver request prompted this appeal.

Mr. Gottesman's denial of SLF's fee waiver request is unjustified on multiple levels both procedurally and substantively. First, Mr. Gottesman employed an incorrect interpretive method in evaluating the "factors" considered by the EPA when determining whether to grant a fee waiver request. Second, despite Mr. Gottesman's conclusory statement to the contrary, the release of the records requested is likely to contribute significantly to the public understanding of the operations or activities of the EPA. And, when considering this factor in conjunction with the three other factors that must be considered, it becomes clear that the requested records are in the public interest and that SLF satisfies the first requirement for a fee waiver. Finally, given SLF's non-profit status and lack of any commercial or financial interest in the requested records, the second requirement for a fee waiver is met.

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A. Mr. Gottesman employed an incorrect interpretive method in evaluating the six factors considered by the EPA.

In Mr. Gottesman's December 12, 2013 letter, he asserted that because SLF allegedly failed to satisfy one of the six "prongs" of the "fee waiver criteria" that "there is no need for this office to address the remaining prongs of the fee waiver criteria. In doing so, Mr. Gottesman treats the six "factors" to be considered as six "elements" that all must be satisfied to grant a fee waiver request. Based on this misinterpretation of the regulations, Mr. Gottesman declined to evaluate five factors. The regulations states only that the EPA "will consider the following factors" in evaluating the validity of a fee waiver request for the two categories. The regulations are void of any limiting construction of this instruction. Rather, the regulations state that the 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>1</sup> To be sure, the regulations are not a "statute;" Mr. Gottesman is not a judge; and the agencies are to be given wide latitude in interpreting Congressional directives.<sup>2</sup> However, the regulations represent 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 five of the six factors outlined by the EPA in the regulations – all of which weigh heavily in favor of a fee waiver considering SLF's non-profit status and the type of records sought – Mr. Gottesman skewed his analysis and unfairly weighted one factor as dispositive.<sup>3</sup>

B. Disclosure of the information is in the public interest.

The EPA should grant SLF's fee waiver request because "disclosure of the information is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."<sup>4</sup> EPA's regulations at 40 C.F.R. § 2.107(k)(2) provide that the EPA must consider the following four factors to determine whether disclosure of the information requested meets the first requirement and thus, is in the public interest: (1) "[w]hether the subject of the requested records concerns 'the operations or activities of the government[;]'" (2) "[w]hether the disclosure is 'likely to contribute' to an understanding of government operations or activities[;]" (3) "[w]hether disclosure of the requested information will contribute to 'public understanding[;]'" and (4) "[w]hether the disclosure is likely to contribute 'significantly' to public understanding of government operations or activities."

<sup>1</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>2</sup> See generally, *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

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

<sup>4</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

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January 10, 2014  
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In its FOIA request, SLF seeks the disclosure of information regarding the EPA's handling and processing of FOIA requests for the years 2009 through 2012. Specifically, SLF asks for (1) "[w]ritten and electronic documents, data memoranda, or reports created by any employee, agency, or consultant created or compiled in the preparation of" specifically identified sections of the EPA's Annual FOIA Reports for the years 2009 through 2012, and (2) "[w]ritten and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses" those previously identified sections of the EPA's Annual FOIA Reports for the years 2009 through 2012. In other words, SLF seeks disclosure of the detailed data underlying the reports.

Consideration of the first factor weighs in favor of granting SLF's fee waiver request because the requested records concern identifiable operations or activities of the EPA – the handling and processing of FOIA requests and the creation of the mandatory Annual FOIA Report. The EPA is subject to the FOIA and has promulgated regulations setting forth the rules that the EPA follows in processing requests for records under the FOIA.<sup>5</sup> The statutory and regulatory requirements set forth a series of identifiable operations and activities that the EPA must comply with in processing FOIA requests. Additionally, the FOIA requires that "each agency . . . submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include" numerous details regarding the agency's administration of the FOIA.<sup>6</sup> Pursuant to the statutory authority provided for in the FOIA, the Department of Justice created a 69-page guide for agencies to follow in creating their Annual FOIA Reports, issued the Open Government Directive and provides agencies with tools for compiling and reporting their annual FOIA activities. As part of its guidance, the Department of Justice has affirmatively stated that, "[t]he Annual FOIA Report is designed to capture an agency's FOIA activities . . ." and to "provide a clear report of agency FOIA activities."<sup>7</sup> In seeking disclosure of the detailed data underlying the EPA's Annual FOIA Reports, SLF is seeking information regarding both the EPA's identifiable operations and activities with respect to the processing of FOIA requests and the EPA's identifiable operations and activities with respect to the compilation of the EPA's mandatory annual report.

Consideration of the second factor also weighs in favor of granting SLF's fee waiver request because the requested records provide meaningful information regarding the EPA's identifiable operations and activities with respect to the processing of FOIA requests and the EPA's identifiable operations and activities with respect to the compilation of the EPA's mandatory annual report. The EPA's Annual FOIA Report provides only summary information regarding the EPA's processing of FOIA requests. For example, it provides the total number of FOIA requests that were fully granted, but it does not identify who requested information, the date of the request, what information was requested or any other details regarding the request. While the summary data is informative to a degree, disclosure of the underlying data takes

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<sup>5</sup> 40 C.F.R. § 2.100 *et seq.*

<sup>6</sup> 5 U.S.C. § 552(e)(1)(2006 & Supp. IV 2010).

<sup>7</sup> Department of Justice Handbook for Agency Annual Freedom of Information Reports (Oct. 29, 2013) at 2.

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informative material and makes it meaningful in such a manner that can only add to the public's understanding of how the EPA processes FOIA requests.

Consideration of the third factor also weighs in favor of granting SLF's fee waiver request because the requested records will contribute to the "public understanding" of how the EPA processes FOIA requests, as opposed to only contributing to SLF's understanding, for two reasons. First, for the years 2009 through 2012, the EPA received over 40,000 FOIA requests. Thus, the requested information will, on an annual basis, contribute to at least 10,000 requesters' understanding of how the EPA processes FOIA requests and more specifically, how their FOIA request was processed in comparison to all other FOIA requests. Second, SLF will undertake all necessary efforts to ensure that the requested records are analyzed, interpreted and disseminated to the largest audience possible. Detailed information regarding the EPA's processing of FOIA requests has far-reaching consequences and affects not only the 10,000 annual FOIA requesters, but every single American. As set forth in SLF's mission statement, one of its primary goals is to "help individuals and businesses stymied by excessive government regulation." SLF always conducts its activities for the benefit of the general public and always seeks to publish the information to as wide an audience as possible. Through its websites and publications, SLF will ensure that the requested disclosure will be available to the tens of thousands of FOIA requesters and the public at large.

Finally, consideration of the fourth factor weighs in favor of granting SLF's fee waiver request because dissemination of the requested records will significantly enhance the public's understanding of how the EPA processes FOIA requests. As previously explained, the Annual FOIA Reports only provide summary information, which is informative but not meaningful. Simply reporting that the EPA claimed Exemption (b)(5) with respect to 430 FOIA requests in 2011, while informative, is not meaningful and provides the public with little understanding why was the exemption was claimed and with respect to what FOIA request. The records sought by SLF, the data underlying the Annual FOIA Reports, is currently not available to any member of the public. Thus, any disclosure of these records would significantly enhance the public's understanding.

C. Disclosure of the requested information is not in the commercial interest of SLF.

EPA's regulations at 40 C.F.R. § 2.107(k)(3) provide that the EPA must consider the following two factors to determine whether disclosure of the information requested is in the commercial interest of the requester: (1) "[w]hether the requester has a commercial interest that would be furthered by the requested disclosure[;]" and (2) "[w]hether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is 'primarily in the commercial interest of the requester.'"

SLF has absolutely no commercial or financial interest in the requested information, and would receive no pecuniary benefit from the information sought. SLF is a non-profit public interest law firm specializing in the practice of constitutional law. SLF also undertakes research

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January 10, 2014  
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on policy issues of interest to the public, such as the handling and processing of FOIA requests by agencies such as the EPA.

D. Conclusion.

In considering all of these factors, one must not forget the overall importance of the FOIA and the required Annual FOIA Reports, and the strong public policy favoring fee waivers to non-profit organizations.<sup>8</sup> The current President himself has stated: "In our democracy, the FOIA, which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring open Government. At the heart of that commitment is the idea that accountability *is in the interest of the Government and the citizenry alike.*"<sup>9</sup> The Annual FOIA Report captures an agency's FOIA activities and ensures the accountability and transparency. However, the Annual FOIA Report only provides summary information – information that is informative, but not meaningful. The disclosure of the underlying data used to compile the Annual FOIA Report can only encourage additional accountability and increase the transparency. There is, as the President stressed, no greater way to ensure an open Government.

For all the reasons expressed above, SLF requests the U.S. EPA FOIA and Privacy Branch overturn Mr. Gottesman's denial of SLF's fee waiver request. Thank you for your time and consideration of 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.  
2255 Sewell Mill Road, Suite 320  
Marietta, Georgia 30062  
(770) 977-2131

<sup>8</sup> To ensure non-profit firms' requests for fee waivers were "liberally construed" and to stress the strong public policy favoring fee waivers for non-profit organizations, Congress went to such great lengths as to amend the FOIA. 132 Cong. Rec. 27, 190 (1986) (Sen. Leahy) *quoted in Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003).

<sup>9</sup> Memorandum of Jan. 21, 2009, 71 Fed. Reg. Vol. 15 (Jan. 26, 2009) (emphasis added).





**SOUTHEASTERN LEGAL FOUNDATION, INC.**

2255 SEWELL MILL ROAD • SUITE 320 • MARIETTA, GEORGIA 30062  
(770) 977-2131 • FAX (770) 977-2134 • www.southeasternlegal.org

November 22, 2013

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

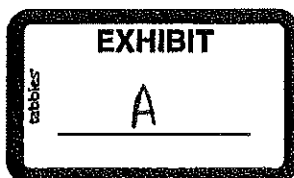
No. 7003 2260 0005 4600 5903

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's (EPA) Freedom of Information Act (FOIA) Annual Reports for the fiscal years 2009 through 2012. Pursuant to our investigation, we request that you provide us with any documents including, but not limited to:

1. Written and electronic documents, data, memoranda, or reports created by any employee, agent, or consultant of the EPA that reflects the underlying data of, or was used, created or compiled in the preparation of, the following sections of the EPA's FOIA Annual Report for October 1, 2008 through September 30, 2009:
  - a. Section V.A. FOIA Requests -- Received, Processed and Pending FOIA Requests.
  - b. Section V.B.(1). FOIA Requests -- Disposition of FOIA Requests All Processed Requests.
  - c. Section V.B.(2). FOIA Requests -- Disposition of FOIA Requests Other Reasons for Full Denials Based on Reasons Other than Exemptions.
  - d. Section V.B.(3). FOIA Requests -- Disposition of FOIA Requests Number of Times Exemptions Applied.
  - e. Section VI.A. Administrative Appeals of Initial Determinations of FOIA Requests -- Received, Processed and Pending Administrative Appeals.
  - f. Section VI.B. Administrative Appeals of Initial Determinations of FOIA Requests -- Disposition of Administrative Appeals All Processed Appeals.
  - g. Section VI.C.(1). Administrative Appeals of Initial Determinations of FOIA Requests -- Reasons for Denial on Appeal Number of Times Exemptions Applied.



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- h. Section VI.C.(2). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Reasons Other than Exemptions.
  - i. Section VI.C.(3). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Other Reasons.
  - j. Section VI.C.(4). Administrative Appeals of Initial Determinations of FOIA Requests – Response Time for Administrative Appeals.
  - k. Section VI.C.(5). Administrative Appeals of Initial Determinations of FOIA Requests – Ten Oldest Pending Administrative Appeals.
  - l. Section VII.A. FOIA Requests; Response Time for Processed and Pending Requests – Processed Requests Response Time for All Processed Perfected Requests.
  - m. Section VII.B. FOIA Requests; Response Time for Processed and Pending Requests – Processed Requests Response Time for Perfected Requests in Which Information Was Granted.
  - n. Section VII.E. FOIA Requests; Response Time for Processed and Pending Requests – Processed Requests Ten Oldest Pending Perfected Requests.
  - o. Section VIII.B. Requests for Expedited Processing and Requests for Fee Waiver Requests for Fee Waiver.
  - p. Section XII.A. Backlogs, Consultations, and Compilations – Backlogs of FOIA Requests and Administrative Appeals.
2. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2008 through September 30, 2009 identified in Items 1.a. through 1.p. of this request.
  3. Written and electronic documents, data, memoranda, or reports created by any employee, agent, or consultant of the EPA that reflects the underlying data of, or was used, created or compiled in the preparation of, the following sections of the EPA's FOIA Annual Report for October 1, 2009 through September 30, 2010:
    - a. Section V.A. FOIA Requests – Received, Processed and Pending FOIA Requests.
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    - c. Section V.B.(2). FOIA Requests – Disposition of FOIA Requests Other Reasons for Full Denials Based on Reasons Other than Exemptions.
    - d. Section V.B.(3). FOIA Requests – Disposition of FOIA Requests Number of Times Exemptions Applied.
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November 22, 2013

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  - p. Section XII.A. Backlogs, Consultations, and Compilations – Backlogs of FOIA Requests and Administrative Appeals.
4. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2009 through September 30, 2010 identified in Items 3.a. through 3.p. of this request.
5. Written and electronic documents, data, memoranda, or reports created by any employee, agent, or consultant of the EPA that reflects the underlying data of, or was used, created or compiled in the preparation of, the following sections of the EPA's FOIA Annual Report for October 1, 2010 through September 30, 2011:
- a. Section V.A. FOIA Requests – Received, Processed and Pending FOIA Requests.
  - b. Section V.B.(1). FOIA Requests – Disposition of FOIA Requests All Processed Requests.
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November 22, 2013  
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6. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2010 through September 30, 2011 identified in Items 5.a. through 5.p. of this request.
7. Written and electronic documents, data, memoranda, or reports created by any employee, agent, or consultant of the EPA that reflects the underlying data of, or was used, created or compiled in the preparation of, the following sections of the EPA's FOIA Annual Report for October 1, 2010 through September 30, 2011:
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November 22, 2013  
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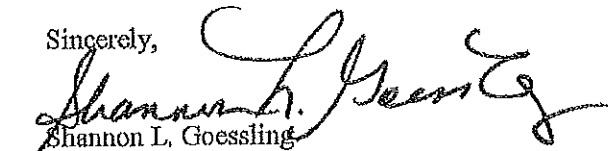
- h. Section VI.C.(2). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Reasons Other than Exemptions.
  - i. Section VI.C.(3). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Other Reasons.
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  - o. Section VIII.B. Requests for Expedited Processing and Requests for Fee Waiver Requests for Fee Waiver.
  - p. Section XII.A. Backlogs, Consultations, and Compilations – Backlogs of FOIA Requests and Administrative Appeals.
8. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2011 through September 30, 2012 identified in Items 7.a. through 7.p. of this request.

This is a request for documents 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.

National Freedom of Information Officer  
November 22, 2013  
Page 6 of 6

Sincerely,



Shannon L. Goessling  
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road, Suite 320  
Marietta, GA 30062  
(770) 977-2131



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

November 27, 2013

OFFICE OF  
ENVIRONMENTAL INFORMATION

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

RE: Request Number EPA-HQ-2014-001493

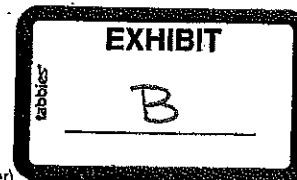
Dear Ms. Goessling:

This is in response to your request for a fee waiver in connection with your Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency (EPA) seeking a copy of records regarding EPA's Freedom of Information Act Annual Reports for the fiscal years 2009 through 2012.

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.

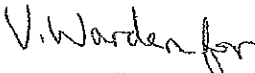


3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.
4. The disclosure must contribute "significantly" to public 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 [FOIA\\_HQ@epa.gov](mailto:FOIA_HQ@epa.gov). If we do not hear from you within seven days from the date of this letter, we will deny your request for a waiver of fees based on insufficient justification.

If you have any questions, please contact the Requester Service Center at [FOIA\\_HQ@epa.gov](mailto:FOIA_HQ@epa.gov) or call us at 202-566-1667.

Sincerely,

  
Larry F. Gottesman  
National FOIA Officer





**SOUTHEASTERN LEGAL FOUNDATION, INC.**

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

December 9, 2013

**VIA U.S. MAIL & EMAIL ([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

RE: FOIA Request No. EPA-HQ-2014-001493

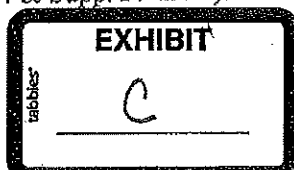
Dear Mr. Gottesman:

This letter is in response to your letter dated November 27, 2013, and received via electronic mail on December 5, 2013, which discussed criteria the Environmental Protection Agency (EPA) uses in evaluating the appropriateness of fee waivers for Freedom of Information Act (FOIA) requests. Southeastern Legal Foundation (SLF) is confident that our FOIA Request No. EPA-HQ-2014-001493 (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, this letter addresses how the Request meets the criteria listed in your November 27, 2013 letter.

As a preliminary statement, and as noted in the Request, 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. On several other occasions, SLF has conducted research and prepared similar FOIA requests relating to the functioning of the federal government, including FOIA requests to the EPA; with one unique exception, 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 Request inquires into the detailed data supporting specific information reported by the EPA in its annual FOIA reports for fiscal years 2009 through 2012, including but not limited to the number of days it took the EPA to respond to a FOIA request and the number of FOIA requests that the EPA granted or denied. Given that responding to FOIA requests is an identifiable operation or activity of federal agencies, any request for information

<sup>1</sup> 5 U.S.C. § 552((4)(A)(iii) (1994 & Supp. IV 1998).



Mr. Larry Gottesman  
December 9, 2013  
Page 2 of 3

regarding how the EPA responded to FOIA requests is a request for information regarding an identifiable operation or activity of the EPA.

The second criterion requires that the requested material "must be meaningfully informative in relation to the subject matter of the request." The Request seeks to discover the underlying data used by the EPA to compile its annual FOIA reports for fiscal years 2009 through 2012. Any documents that articulate this information are of great public interest and are meaningfully informative in relation to the subject matter of the Request - especially given the importance that the government places on these annual FOIA reports and the continued public discussion of the importance of governmental transparency.

The third criterion requires that 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." This Request satisfies this requirement for a litany of reasons. 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." Information regarding the EPA's responses to FOIA requests such as delays in response time, denials of requests and exemption claims, have far-reaching consequences and affect every single American. In stressing the importance of FOIA, the current President has stated: "In our democracy, the FOIA, which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability *is in the interest of the Government and the citizenry alike.*"<sup>2</sup> Thus, as the President himself proclaimed, the data underlying the information reported on the EPA's annual FOIA report affects every citizen.

The fourth criterion requires that the "disclosure must contribute 'significantly' to public understanding of government operations or activities." The EPA's annual FOIA reports provide only a summary of how the EPA responded to FOIA requests made by the public. Disclosure of the supporting data will contribute significantly to the public's understanding of how the EPA responds to the public's FOIA requests, including information such as which FOIA requests were granted and which ones were denied, which FOIA requests were responded to quickly and which ones took years to complete, and which FOIA requestors were granted fee waivers and which ones were not. All of this information will significantly contribute to the public's understanding of a key EPA operation and activity.

With respect to the fifth and sixth criteria, SLF has absolutely no commercial or financial interest in the requested information, and would receive no pecuniary benefit from the information sought. As such, these criteria should weigh heavily in favor of granting SLF's request for a fee waiver.

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<sup>2</sup> Memorandum of Jan. 21, 2009, 74 Fed. Reg. Vol. 15 (Jan. 26, 2009) (emphasis added).

Mr. Larry Gottesman  
December 9, 2013  
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Thank you for your time and consideration in this matter. We trust that this information will be sufficient as you evaluate the merits of the requested fee waiver. Also, please note that SLF did not receive your November 27, 2013 letter until December 5, 2013, when Vivian Warden provided it to us via electronic mail. To date, SLF has not yet received your November 27, 2013 letter via U.S. Mail. Please ensure that your records reflect our correct address: 2255 Sewell Mill Road, Suite 320, Marietta, Georgia 30062.

If you have any question, please contact me at the telephone number listed below.

Sincerely,



Shannon L. Goessling  
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road, Suite 320  
Marietta, Georgia 30062  
(770) 977-2131

cc: Vivian Warden (via e-mail, Warden.Vivian@epa.gov)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460  
December 12, 2013

Ms. K. Jovette Ayers  
Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road, Suite 320  
Marietta, GA 30062

OFFICE OF  
ENVIRONMENTAL INFORMATION

RE: Request Number EPA-HQ-2014-001493

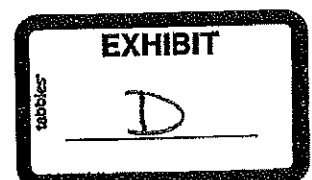
Dear Ms. Ayers:

This is in response to your request for a waiver of fees in connection with your Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency (EPA) seeking a copy of records regarding EPA's Freedom of Information Act Annual Reports for the fiscal years 2009 through 2012.

We have reviewed your fee waiver justification and based on the information provided, we are denying your request for a fee waiver. You have failed to demonstrate that the release of the information requested significantly increases the public understanding of government operations or activities. Accordingly, there is no need for this office to address the remaining prongs of the fee waiver criteria. If the estimated cost exceeds \$50.00, we will contact you regarding the cost of processing your request and seek an assurance of payment. We will be unable to process your request until they receive your written assurance of payment.

Under the FOIA, you have the right to appeal this determination to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, NW (2822T), Washington, DC 20460 (U.S. Postal Service Only), E-mail: FOIA\_HQ@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, 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 FOI number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal." Should you choose to appeal this determination, please be sure to fully address all factors required by EPA's FOIA Regulations, located at 40 C.F.R. § 2.107(I) in your appeal. If you have any questions concerning this determination please contact me at (202) 566-1667.

Sincerely,  
  
Larry F. Gottesman  
National FOIA Officer



# EXHIBIT C-7



**SOUTHEASTERN LEGAL FOUNDATION, INC.**

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

January 13, 2014

**VIA E-MAIL (FOIA\_HQ@epa.gov)**  
National Freedom of Information Office  
U.S. EPA, FOIA and Privacy Branch  
1200 Pennsylvania Avenue, NW (2882T)  
Washington, DC 20460

Re: Freedom of Information Act Appeal - Appeal of Delay in Processing; FOIA Request No. EPA-HQ-2014-001493

Dear Sir or Madam,

This letter will serve as the appeal of Southeastern Legal Foundation (SLF) from the failure of the Environmental Protection Agency (EPA) to respond to SLF's Freedom of Information Act Request dated November 22, 2013 (Request).

On November 22, 2013, SLF submitted the Request to the EPA via certified mail return receipt requested, seeking documents relating to the EPA's Annual FOIA Reports for the fiscal years 2009 through 2012 (attached hereto as Exhibit A). According to the returned receipt, the EPA received the Request on November 26, 2013 (attached hereto as Exhibit B). In a letter dated November 27, 2013, the EPA acknowledged receipt of the Request (attached hereto as Exhibit C). In a telephone conversation on December 16, 2013, Mr. Larry Gottesman, National FOIA Officer, informed SLF that the EPA is not in possession of the requested documents and would be notifying SLF in writing of the EPA's determination and SLF's rights to appeal. In turn, SLF stated that upon receipt of such letter, SLF intended to appeal if appropriate. SLF has still not received the EPA's written notification of its adverse determination and of SLF's right to appeal such adverse determination.

EPA has not met the mandatory deadlines imposed by the Freedom of Information Act (FOIA) and the Code of Federal Regulations applicable to the EPA's processing of FOIA requests. *See* 5 U.S.C. § 552 *et seq.*; 40 CFR 2 *et seq.* The FOIA requires the EPA to "determine within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of any such request whether to comply with such request" and to "immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination." 5 U.S.C. § 552 (a)(6)(A)(i). In unusual circumstances, the EPA may extend said deadline by ten working days if and only if the EPA extends written notice of such extension to the FOIA requester.

Freedom of Information Act Appeal

January 13, 2014

Page 2 of 2

While the EPA notified SLF via a telephone communication that it intended to issue an adverse determination, it has failed to actually issue its determination and has failed to provide such any such determination in writing, as required by the FOIA and the Code of Federal Regulations. The EPA's inexplicable delay in providing SLF with the requisite written notification has caused SLF irreparable harm and undue delay because SLF cannot appeal the adverse determination until it has received the EPA's written determination.

Despite the delays caused by the EPA's failure to conform with the FOIA and its own regulations in processing the Request, we remain interested in reviewing any responsive documents and in appealing Mr. Gottesman's adverse determination. Due to the EPA's delay in providing written notification of a determination reached a month ago, thus far, it appears that judicial intervention may be required to compel the EPA to respond. To avoid litigation, please respond to this letter with the EPA's complete response, including exemption status regarding any redactions to each of the documents which have been identified as responsive to our request.

If you have any questions, please contact me without delay. We await a prompt reply, as this letter constitutes our administrative appeal.

Sincerely,

  
Shannon L. Goessling  
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road, Suite 320  
Marietta, GA 30062  
(770) 977-2131



**SOUTHEASTERN LEGAL FOUNDATION, INC.**

2255 SEWELL MILL ROAD • SUITE 320 • MARIETTA, GEORGIA 30062  
(770) 977-2131 • FAX (770) 977-2134 • www.southeasternlegal.org

November 22, 2013

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

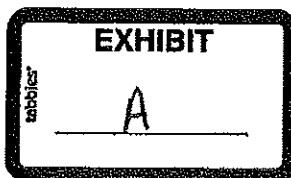
No. 7003 2260 0005 4600 5903

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's (EPA) Freedom of Information Act (FOIA) Annual Reports for the fiscal years 2009 through 2012. Pursuant to our investigation, we request that you provide us with any documents including, but not limited to:

1. Written and electronic documents, data, memoranda, or reports created by any employee, agent, or consultant of the EPA that reflects the underlying data of, or was used, created or compiled in the preparation of, the following sections of the EPA's FOIA Annual Report for October 1, 2008 through September 30, 2009:
  - a. Section V.A. FOIA Requests – Received, Processed and Pending FOIA Requests.
  - b. Section V.B.(1). FOIA Requests – Disposition of FOIA Requests All Processed Requests.
  - c. Section V.B.(2). FOIA Requests – Disposition of FOIA Requests Other Reasons for Full Denials Based on Reasons Other than Exemptions.
  - d. Section V.B.(3). FOIA Requests – Disposition of FOIA Requests Number of Times Exemptions Applied.
  - e. Section VI.A. Administrative Appeals of Initial Determinations of FOIA Requests – Received, Processed and Pending Administrative Appeals.
  - f. Section VI.B. Administrative Appeals of Initial Determinations of FOIA Requests – Disposition of Administrative Appeals All Processed Appeals.
  - g. Section VI.C.(1). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Number of Times Exemptions Applied.





National Freedom of Information Officer  
November 22, 2013  
Page 2 of 6

- h. Section VI.C.(2). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Reasons Other than Exemptions.
  - i. Section VI.C.(3). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Other Reasons.
  - j. Section VI.C.(4). Administrative Appeals of Initial Determinations of FOIA Requests – Response Time for Administrative Appeals.
  - k. Section VI.C.(5). Administrative Appeals of Initial Determinations of FOIA Requests – Ten Oldest Pending Administrative Appeals.
  - l. Section VII.A. FOIA Requests: Response Time for Processed and Pending Requests – Processed Requests Response Time for All Processed Perfected Requests.
  - m. Section VII.B. FOIA Requests: Response Time for Processed and Pending Requests – Processed Requests Response Time for Perfected Requests in Which Information Was Granted.
  - n. Section VII.B. FOIA Requests: Response Time for Processed and Pending Requests – Processed Requests Ten Oldest Pending Perfected Requests.
  - o. Section VIII.B. Requests for Expedited Processing and Requests for Fee Waiver Requests for Fee Waiver.
  - p. Section XII.A. Backlogs, Consultations, and Compilations – Backlogs of FOIA Requests and Administrative Appeals.
2. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2008 through September 30, 2009 identified in Items 1.a. through 1.p. of this request.
  3. Written and electronic documents, data, memoranda, or reports created by any employee, agent, or consultant of the EPA that reflects the underlying data of, or was used, created or compiled in the preparation of, the following sections of the EPA's FOIA Annual Report for October 1, 2009 through September 30, 2010:
    - a. Section V.A. FOIA Requests – Received, Processed and Pending FOIA Requests.
    - b. Section V.B.(1). FOIA Requests – Disposition of FOIA Requests All Processed Requests.
    - c. Section V.B.(2). FOIA Requests – Disposition of FOIA Requests Other Reasons for Full Denials Based on Reasons Other than Exemptions.
    - d. Section V.B.(3). FOIA Requests – Disposition of FOIA Requests Number of Times Exemptions Applied.
    - e. Section VI.A. Administrative Appeals of Initial Determinations of FOIA Requests – Received, Processed and Pending Administrative Appeals.
    - f. Section VI.B. Administrative Appeals of Initial Determinations of FOIA Requests – Disposition of Administrative Appeals All Processed Appeals.
    - g. Section VI.C.(1). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Number of Times Exemptions Applied.

National Freedom of Information Officer  
November 22, 2013  
Page 3 of 6

- h. Section VI.C.(2). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Reasons Other than Exemptions.
  - i. Section VI.C.(3). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Other Reasons.
  - j. Section VI.C.(4). Administrative Appeals of Initial Determinations of FOIA Requests – Response Time for Administrative Appeals.
  - k. Section VI.C.(5). Administrative Appeals of Initial Determinations of FOIA Requests – Ten Oldest Pending Administrative Appeals.
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  - m. Section VII.B. FOIA Requests: Response Time for Processed and Pending Requests – Processed Requests Response Time for Perfected Requests in Which Information Was Granted.
  - n. Section VII.E. FOIA Requests: Response Time for Processed and Pending Requests – Processed Requests Ten Oldest Pending Perfected Requests.
  - o. Section VIII.B. Requests for Expedited Processing and Requests for Fee Waiver Requests for Fee Waiver.
  - p. Section XII.A. Backlogs, Consultations, and Compilations – Backlogs of FOIA Requests and Administrative Appeals.
4. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2009 through September 30, 2010 identified in Items 3.a. through 3.p. of this request.
5. Written and electronic documents, data, memoranda, or reports created by any employee, agent, or consultant of the EPA that reflects the underlying data of, or was used, created or compiled in the preparation of, the following sections of the EPA's FOIA Annual Report for October 1, 2010 through September 30, 2011:
- a. Section V.A. FOIA Requests – Received, Processed and Pending FOIA Requests.
  - b. Section V.B.(1). FOIA Requests – Disposition of FOIA Requests All Processed Requests.
  - c. Section V.B.(2). FOIA Requests – Disposition of FOIA Requests Other Reasons for Full Denials Based on Reasons Other than Exemptions.
  - d. Section V.B.(3). FOIA Requests – Disposition of FOIA Requests Number of Times Exemptions Applied.
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  - g. Section VI.C.(1). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Number of Times Exemptions Applied.

National Freedom of Information Officer  
November 22, 2013  
Page 4 of 6

- h. Section VI.C.(2). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Reasons Other than Exemptions.
  - i. Section VI.C.(3). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Other Reasons.
  - j. Section VI.C.(4). Administrative Appeals of Initial Determinations of FOIA Requests – Response Time for Administrative Appeals.
  - k. Section VI.C.(5). Administrative Appeals of Initial Determinations of FOIA Requests – Ten Oldest Pending Administrative Appeals.
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  - o. Section VIII.B. Requests for Expedited Processing and Requests for Fee Waiver Requests for Fee Waiver.
  - p. Section XII.A. Backlogs, Consultations, and Compilations – Backlogs of FOIA Requests and Administrative Appeals.
6. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2010 through September 30, 2011 identified in Items 5.a. through 5.p. of this request.
7. Written and electronic documents, data, memoranda, or reports created by any employee, agent, or consultant of the EPA that reflects the underlying data of, or was used, created or compiled in the preparation of, the following sections of the EPA's FOIA Annual Report for October 1, 2010 through September 30, 2011:
- a. Section V.A. FOIA Requests – Received, Processed and Pending FOIA Requests.
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  - g. Section VI.C.(1). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Number of Times Exemptions Applied.

National Freedom of Information Officer

November 22, 2013

Page 5 of 6

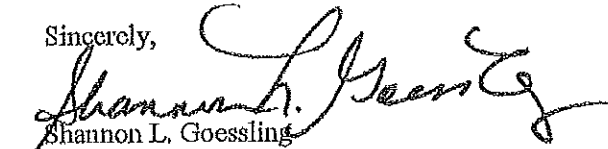
- h. Section VI.C.(2). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Reasons Other than Exemptions.
  - i. Section VI.C.(3). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Other Reasons.
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  - o. Section VIII.B. Requests for Expedited Processing and Requests for Fee Waiver Requests for Fee Waiver.
  - p. Section XII.A. Backlogs, Consultations, and Compilations – Backlogs of FOIA Requests and Administrative Appeals.
8. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2011 through September 30, 2012 identified in Items 7.a. through 7.p. of this request.

This is a request for documents 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.

National Freedom of Information Officer  
November 22, 2013  
Page 6 of 6

Sincerely,



Shannon L. Goessling  
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road, Suite 320  
Marietta, GA 30062  
(770) 977-2131

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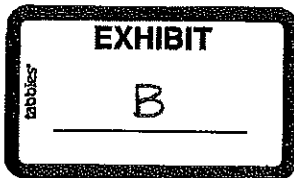
EAST COAST BRANCH  
 NOV 20 2011  
 11:13  
 WASHINGTON, DC  
 USPS

7003 2260 0005 4600 5903

<i>Sent To:</i>	National FOIA Officer
<i>Street, Apt. No., or PO Box No.</i>	U.S. EPA, 1200 Penn. Ave.
<i>City, State, ZIP+4</i>	Washington, DC 20460

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span></p> <p>B. Received by (Printed Name) <span style="float: right;">C. Date of Delivery</span></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>National FOIA Officer                  U.S. EPA                  1200 Pennsylvania Ave NW                  (2822T)                  Washington, DC                  20460</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7003 2260 0005 4600 5903</p>
PS Form 3811, August 2001 <span style="margin-left: 100px;">Domestic Return Receipt</span> <span style="float: right;">102595-02-M-1540</span>	





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

OFFICE OF  
ENVIRONMENTAL INFORMATION

November 27, 2013

Shannon L. Goessling  
Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road  
Suite 320  
Marietta, GA 30062

Dear Mr. Goessling:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request that you submitted to the U.S. Environmental Protection Agency (EPA) and was received on November 26, 2013. The tracking number for your request is EPA-HQ-2013-001489.

You are now able to track the status of your request and file future requests through FOIAonline (a multi-agency shared service FOIA solution) available on the Web at <https://foiaonline.regulations.gov>. FOIAonline allows you to submit a request as a registered user or as a guest. As a registered user, you may easily organize and view all of your requests, quickly create new requests and modify, withdraw or appeal a request online.

If you have any questions, please contact EPA's FOIA Requester Service Center at 202-566-1667.

Sincerely,

*Larry F. Gottesman*  
National FOIA Officer



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

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# EXHIBIT C-8





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

OFFICE OF  
GENERAL COUNSEL

January 14, 2014

Shannon L. Goessling  
Southeastern legal Foundation, Inc  
2255 Sewell Mill Road – Suite 320  
Marietta, GA 30062

Re: Freedom of Information Act Request HQ-2014-001493 (HQ-APP-2014-002498)

Dear Ms. Goessling:

This letter is being sent to acknowledge receipt of your FOIA appeal received in the Office of General Counsel on January 13, 2013.

Sincerely,

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

Barbara Bruce  
FOIA Specialist  
General Law Office

# EXHIBIT C-9



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

March 6, 2014

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

OFFICE OF  
ENVIRONMENTAL INFORMATION

RE: Request Number EPA-HQ-2014-001493

Dear Ms. Goessling:

This is response to your Freedom Of Information Act (FOIA) request seeking any "written and electron documents, data, memoranda, or reports created by any employee, agent or consultant of the EPA that reflects the underlying date of, or was used, create or complied in preparing of, section of EPA' Annual Reports from October 1, 2008 - September 30, 2012."

EPA used FOIAXpress, as the tracking tool and to create EPA's FOIA Annual Reports which are the subject of your request. FOIAXpress is a propriety software tool that is no longer being used by EPA or being supported by the vendor. In the past when we received a similar request, the vendor had to run a special report, through the "back-end", which we do not have access to. Accordingly, we are unable to produce any data from FOIAXpress. However, EPA Annual Reports are available on line at <http://www.epa.gov/foia/annual.html>.

Under the FOIA, you have the right to appeal this determination to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, NW (2822T), Washington, DC 20460 (U.S. Postal Service Only), E-mail: [foia\\_hq@epa.gov](mailto:foia_hq@epa.gov). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, 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 FOI number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Sincerely,

  
Larry F. Gottesman  
National FOIA Officer

# EXHIBIT C-10



**SOUTHEASTERN LEGAL FOUNDATION, INC.**

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

April 4, 2014

**VIA U.S. MAIL & E-MAIL (foia\_hq@epa.gov)**

National Freedom of Information Office

U.S. EPA

FOIA and Privacy Branch

1200 Pennsylvania Avenue, NW (2822T)

Washington, D.C. 20460

RE: Freedom of Information Act Appeal; Freedom of Information Act Request No. EPA-HQ-2014-001489 (HQ-APP-2014-002498)

Dear Sir or Madam:

This letter is an appeal pursuant to 5 U.S.C. § 552(a)(6), concerning the Environmental Protection Agency's (EPA) refusal to disclose certain agency records in response to Southeastern Legal Foundation's Freedom of Information Act (FOIA) Request No. EPA-HQ-2014-001489, erroneously identified as EPA-HQ-2014-001493 in subsequent communication from the EPA (Request). On November 22, 2013, SLF submitted the Request in which it sought the disclosure information regarding the EPA's handling and processing of FOIA requests for the years 2009 through 2012 and the raw statistical data used to create the EPA's Annual FOIA Reports for those same years. Specifically, SLF asked for (1) "[w]ritten and electronic documents, data memoranda, or reports created by any employee, agency, or consultant created or compiled in preparation of" specifically identified sections of the EPA's Annual FOIA Reports for the years 2009 through 2012, and (2) "[w]ritten and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses" those previously identified sections of the EPA's Annual FOIA Reports for the years 2009 through 2012. (Attached as Exhibit 1.)

On December 16, 2013, Kimberly Hermann, SLF Litigation Fellow, spoke with Larry Gottesman, EPA FOIA Officer, regarding the status of the EPA's response to the Request. During said telephone conversation, Mr. Gottesman informed Ms. Hermann that the EPA intended to deny the Request in full because for the years 2009 through 2012, FOIAXpress maintained the raw statistical data underlying the EPA's Annual FOIA Reports on behalf of the EPA, and that since the EPA created its own proprietary software and began maintaining such data in-house, FOIAXpress refused to give the EPA access to its data.

Freedom of Information Act Appeal  
April 4, 2014  
Page 2 of 3

Despite Mr. Gottesman's notification that the EPA would be denying the Request in full, SLF did not receive written notification of the EPA's determination and SLF's right to appeal within the deadlines imposed by FOIA and the Code of Federal Regulations applicable to the EPA's processing of FOIA requests. *See* 5 U.S.C. § 552 *et seq.*; 40 CFR 2 *et seq.* Accordingly, on January 13, 2014, SLF appealed the EPA's failure to respond to the Request. (Attached as Exhibit 2.) In a letter dated January 14, 2014, the EPA acknowledged receipt of SLF's appeal. (Attached as Exhibit 3.) Nearly two months later, in a letter dated March 6, 2014, the EPA formally denied the Request and notified SLF of its right to appeal. (Attached as Exhibit 4.) SLF appeals the EPA's denial for the following reasons.

First, the EPA failed to produce any documents in response to Items 2, 4, 6 and 8 as set forth in the Request, and failed to explain its failure to produce such documents. Specifically, SLF sought "[w]ritten and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses" the identified sections of the EPA's Annual FOIA Reports for the years 2009 through 2012. Based on the EPA's response, it is unclear if the EPA even performed the requisite searches for responsive documents. SLF respectfully requests that the EPA either confirm that it has no documents responsive to Items 2, 4, 6 and 8, or produce any and all responsive documents in its possession or control immediately.

Second, the EPA has a statutory obligation to make the requested agency records available. 5 U.S.C. § 552(a)(3). The FOIA defines "record" as "any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format." 5 U.S.C. § 552(f)(2)(A). This includes any such information "maintained for an agency by an entity under Government contract, for the purposes of records management." 5 U.S.C. § 552(f)(2)(B). Thus, a record does not lose its "agency record" status when physically maintained by a government contractor for purposes of records management.

Further, even if the records sought did not satisfy the definition of a "record" as set forth in the FOIA, all agencies are required to make the records sought in Items 1, 3, 5 and 7 available to the public upon request, regardless of who maintains them. *See* 5 U.S.C. § 552(e)(3) (requiring all agencies to "make the raw statistical data used in its [annual reports to the Attorney General] available electronically to the public upon request."). Therefore, even though the records sought in Items 1, 3, 5 and 7 of the Request may have been maintained by FOIAXpress on behalf of the EPA, the records are still subject to the FOIA and the EPA is still obligated to make them available. SLF respectfully requests that the EPA obtain the requested records from FOIAXpress and produce any and all responsive documents immediately.

The EPA is required to provide a substantive response to this appeal within twenty (20) working days. 40 CFR 2.104(k). In the event this appeal is denied, the EPA is required to provide a written response describing the reasons for the denial, names and titles of each person responsible for the denial, and the procedures required to invoke judicial assistance in this matter. 5 U.S.C. § 552(a)(6)(A)(ii).

Freedom of Information Act Appeal  
April 4, 2014  
Page 3 of 3

Sincerely,

  
Shannon L. Goessling  
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road, Suite 320  
Marietta, Georgia 30062  
(770) 977-2131



**SOUTHEASTERN LEGAL FOUNDATION, INC.**

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(770) 977-2131 • FAX (770) 977-2134 • www.southeasternlegal.org

November 22, 2013

VIA CERTIFIED MAIL

No. 7003 2260 0005 4600 5903

RETURN RECEIPT REQUESTED

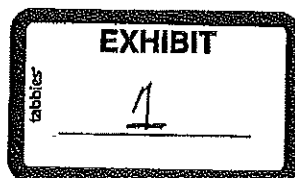
National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

RE: Freedom of Information Act Request

Dear 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's (EPA) Freedom of Information Act (FOIA) Annual Reports for the fiscal years 2009 through 2012. Pursuant to our investigation, we request that you provide us with any documents including, but not limited to:

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  - f. Section VI.B. Administrative Appeals of Initial Determinations of FOIA Requests -- Disposition of Administrative Appeals All Processed Appeals.
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National Freedom of Information Officer  
November 22, 2013  
Page 2 of 6

- h. Section VI.C.(2). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Reasons Other than Exemptions.
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National Freedom of Information Officer  
November 22, 2013  
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8. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the BPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2011 through September 30, 2012 identified in Items 7.a through 7.p. of this request.

This is a request for documents 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.

National Freedom of Information Officer  
November 22, 2013  
Page 6 of 6

Sincerely,



Shannon L. Goessling  
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road, Suite 320  
Marietta, GA 30062  
(770) 977-2131



**SOUTHEASTERN LEGAL FOUNDATION, INC.**

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(770) 977-2131 • FAX (770) 977-2134 • www.southeasternlegal.org

January 13, 2014

**VIA E-MAIL (FOIA HQ@epa.gov)**  
National Freedom of Information Office  
U.S. EPA, FOIA and Privacy Branch  
1200 Pennsylvania Avenue, NW (2882T)  
Washington, DC 20460

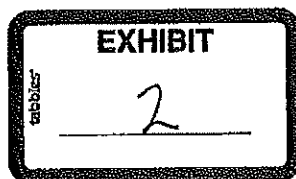
Re: Freedom of Information Act Appeal - Appeal of Delay in Processing; FOIA Request No. EPA-HQ-2014-001493

Dear Sir or Madam,

This letter will serve as the appeal of Southeastern Legal Foundation (SLF) from the failure of the Environmental Protection Agency (EPA) to respond to SLF's Freedom of Information Act Request dated November 22, 2013 (Request).

On November 22, 2013, SLF submitted the Request to the EPA via certified mail return receipt requested, seeking documents relating to the EPA's Annual FOIA Reports for the fiscal years 2009 through 2012 (attached hereto as Exhibit A). According to the returned receipt, the EPA received the Request on November 26, 2013 (attached hereto as Exhibit B). In a letter dated November 27, 2013, the EPA acknowledged receipt of the Request (attached hereto as Exhibit C). In a telephone conversation on December 16, 2013, Mr. Larry Gottesman, National FOIA Officer, informed SLF that the EPA is not in possession of the requested documents and would be notifying SLF in writing of the EPA's determination and SLF's rights to appeal. In turn, SLF stated that upon receipt of such letter, SLF intended to appeal if appropriate. SLF has still not received the EPA's written notification of its adverse determination and of SLF's right to appeal such adverse determination.

EPA has not met the mandatory deadlines imposed by the Freedom of Information Act (FOIA) and the Code of Federal Regulations applicable to the EPA's processing of FOIA requests. *See* 5 U.S.C. § 552 *et seq.*; 40 CFR 2 *et seq.* The FOIA requires the EPA to "determine within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of any such request whether to comply with such request" and to "immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination." 5 U.S.C. § 552 (a)(6)(A)(i). In unusual circumstances, the EPA may extend said deadline by ten working days if and only if the EPA extends written notice of such extension to the FOIA requestor.



Freedom of Information Act Appeal  
January 13, 2014  
Page 2 of 2

While the EPA notified SLF via a telephone communication that it intended to issue an adverse determination, it has failed to actually issue its determination and has failed to provide such any such determination in writing, as required by the FOIA and the Code of Federal Regulations. The EPA's inexplicable delay in providing SLF with the requisite written notification has caused SLF irreparable harm and undue delay because SLF cannot appeal the adverse determination until it has received the EPA's written determination.

Despite the delays caused by the EPA's failure to conform with the FOIA and its own regulations in processing the Request, we remain interested in reviewing any responsive documents and in appealing Mr. Gottesman's adverse determination. Due to the EPA's delay in providing written notification of a determination reached a month ago, thus far, it appears that judicial intervention may be required to compel the EPA to respond. To avoid litigation, please respond to this letter with the EPA's complete response, including exemption status regarding any redactions to each of the documents which have been identified as responsive to our request.

If you have any questions, please contact me without delay. We await a prompt reply, as this letter constitutes our administrative appeal.

Sincerely,

  
Shannon L. Goessling  
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road, Suite 320  
Marietta, GA 30062  
(770) 977-2131



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November 22, 2013

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

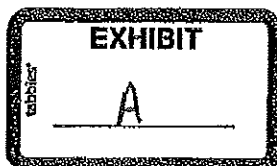
No. 7003 2260 0005 4600 5903

RE: Freedom of Information Act Request

Dear FOIA Compliance Officer,

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National Freedom of Information Officer  
November 22, 2013  
Page 2 of 6

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National Freedom of Information Officer  
November 22, 2013  
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National Freedom of Information Officer  
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  - c. Section V.B.(2). FOIA Requests – Disposition of FOIA Requests Other Reasons for Full Denials Based on Reasons Other than Exemptions.
  - d. Section V.B.(3). FOIA Requests – Disposition of FOIA Requests Number of Times Exemptions Applied.
  - e. Section VI.A. Administrative Appeals of Initial Determinations of FOIA Requests – Received, Processed and Pending Administrative Appeals.
  - f. Section VI.B. Administrative Appeals of Initial Determinations of FOIA Requests – Disposition of Administrative Appeals All Processed Appeals.
  - g. Section VI.C.(1). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Number of Times Exemptions Applied.

National Freedom of Information Officer  
November 22, 2013  
Page 5 of 6

- h. Section VI.C.(2). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Reasons Other than Exemptions.
  - i. Section VI.C.(3). Administrative Appeals of Initial Determinations of FOIA Requests – Reasons for Denial on Appeal Other Reasons.
  - j. Section VI.C.(4). Administrative Appeals of Initial Determinations of FOIA Requests – Response Time for Administrative Appeals.
  - k. Section VI.C.(5). Administrative Appeals of Initial Determinations of FOIA Requests – Ten Oldest Pending Administrative Appeals.
  - l. Section VII.A. FOIA Requests: Response Time for Processed and Pending Requests – Processed Requests Response Time for All Processed Perfected Requests.
  - m. Section VII.B. FOIA Requests: Response Time for Processed and Pending Requests – Processed Requests Response Time for Perfected Requests in Which Information Was Granted..
  - n. Section VII.E. FOIA Requests: Response Time for Processed and Pending Requests – Processed Requests Ten Oldest Pending Perfected Requests.
  - o. Section VIII.B. Requests for Expedited Processing and Requests for Fee Waiver Requests for Fee Waiver.
  - p. Section XII.A. Backlogs, Consultations, and Compilations – Backlogs of FOIA Requests and Administrative Appeals.
8. Written and electronic correspondence, memoranda, data, or reports created by any employee, agent, or consultant of the EPA that discusses the sections of the EPA's FOIA Annual Report for October 1, 2011 through September 30, 2012 identified in Items 7.a. through 7.p. of this request.

This is a request for documents 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.

National Freedom of Information Officer  
November 22, 2013  
Page 6 of 6

Sincerely,



Shannon L. Goessling  
Executive Director & Chief Legal Counsel

Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road, Suite 320  
Marietta, GA 30062  
(770) 977-2131

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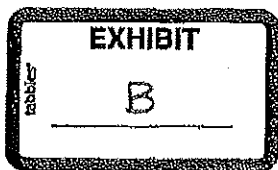
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Send to:  
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 Street, Apt. No., or PO Box No. **U.S. EPA, 1200 Penn. Ave.**  
 City, State, ZIP+4 **Washington, DC 20460**

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature: <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name): <i>[Signature]</i></p> <p>C. Date of Delivery: <i>11/13/15</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> NO                      If YES, enter delivery address below:</p>
<p>1. Article Addressed to:  <b>National FOIA Officer</b>  <b>U.S. EPA</b>  <b>1200 Pennsylvania Ave NW</b>  <b>(2825T)</b>  <b>Washington, DC</b>  <b>20460</b></p>	<p>3. Service Type:  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.  <input type="checkbox"/> Restricted Delivery (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label):</p>	<p>7003 2260 0005 4600 5802</p>

PS Form 3811, August 2001 Domestic Return Receipt 0269-02-M-1540





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

OFFICE OF  
ENVIRONMENTAL INFORMATION

November 27, 2013

Shannon L. Goessling  
Southeastern Legal Foundation, Inc.  
2255 Sewell Mill Road  
Suite 320  
Marietta, GA 30062

Dear Mr. Goessling:

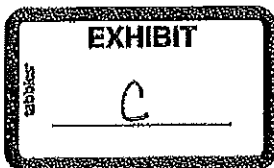
This is to acknowledge receipt of your Freedom of Information Act (FOIA) request that you submitted to the U.S. Environmental Protection Agency (EPA) and was received on November 26, 2013. The tracking number for your request is EPA-HQ-2013-001489.

You are now able to track the status of your request and file future requests through FOIAonline (a multi-agency shared service FOIA solution) available on the Web at <https://foiaonline.regulations.gov>. FOIAonline allows you to submit a request as a registered user or as a guest. As a registered user, you may easily organize and view all of your requests, quickly create new requests and modify, withdraw or appeal a request online.

If you have any questions, please contact EPA's FOIA Requester Service Center at 202-566-1667.

Sincerely,

*Larry F. Gottesman*  
National FOIA Officer



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

OFFICE OF  
GENERAL COUNSEL

January 14, 2014

Shannon L. Goessling  
Southeastern legal Foundation, Inc  
2255 Sewell Mill Road – Suite 320  
Marietta, GA 30062

Re: Freedom of Information Act Request HQ-2014-001493 (HQ-APP-2014-002498)

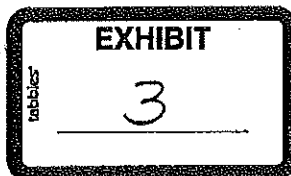
Dear Ms. Goessling:

This letter is being sent to acknowledge receipt of your FOIA appeal received in the Office of General Counsel on January 13, 2013.

Sincerely,

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

Barbara Bruce  
FOIA Specialist  
General Law Office







UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

March 6, 2014

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

OFFICE OF  
ENVIRONMENTAL INFORMATION

RE: Request Number EPA-HQ-2014-001493


Dear Ms. Goessling:

This is response to your Freedom Of Information Act (FOIA) request seeking any written and electron documents, data, memoranda, or reports created by any employee, agent or consultant of the EPA that reflects the underlying date of, or was used, create or complied in preparing of, section of EPA' Annual Reports from October 1, 2008 - September 30, 2012."

EPA used FOIAXpress, as the tracking tool and to create EPA's FOIA Annual Reports which are the subject of your request. FOIAXpress is a propriety software tool that is no longer being used by EPA or being supported by the vendor. In the past when we received a similar request, the vendor had to run a special report, through the "back-end", which we do not have access to. Accordingly, we are unable to produce any data from FOIAXpress. However, EPA Annual Reports are available on line at <http://www.epa.gov/foia/annual.html>.

Under the FOIA, you have the right to appeal this determination to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, NW (2822T), Washington, DC 20460 (U.S. Postal Service Only), E-mail: [foia\\_hq@epa.gov](mailto:foia_hq@epa.gov). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, 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 FOI number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Sincerely,

  
Larry F. Gottesman  
National FOIA Officer



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# EXHIBIT C-11



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

JUN 30 2014

OFFICE OF  
GENERAL COUNSEL

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

Re: Freedom of Information Act Appeal EPA-HQ-2014-002498 (EPA-HQ-2014-001493)

This letter is in reference to your January 10, 2014 fee waiver appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. You appealed the December 12, 2013 decision of Larry Gottesman of the U.S. Environmental Protection Agency ("EPA" or "Agency") to deny your request for a fee waiver. You seek a waiver of all fees associated with your FOIA request for records related to the underlying data for certain EPA annual FOIA reports as described in your November 22, 2013 request.

The Office of Environmental Information ("OEI") responded to your request on March 6, 2014 indicating that no responsive records were located. There were no billable fees associated with your request. Therefore, your appeal of the denial of your fee waiver for your request is moot, and I am closing your appeal file.

This letter constitutes EPA's final determination on this matter. Pursuant to 5 U.S.C. 552(a)(4)(B), you may obtain judicial review of this determination by filing a complaint in the United States District Court for the district in which you reside or have your principal place of business, or the district in which the records are situated, or in the District of Columbia. As part of the 2007 FOIA amendments, the Office of Government Information Services ("OGIS") within the National Archives and Records Administration was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD, 20740-6001; e-mail, [ogis@nara.gov](mailto:ogis@nara.gov); telephone, 301-837-1996 or 1-877-684-6448; and facsimile, 301-837-0348.

Ms. Shannon Goessling  
EPA-HQ-2014-002498  
Page 2 of 2

Should you have any questions concerning this matter, please call Lynn Kelly at (202) 564-3266.

Sincerely,

  
for

Kevin M. Miller  
Assistant General Counsel  
General Law Office

cc: HQ FOI Office