

EXHIBIT A



SOUTHEASTERN LEGAL FOUNDATION, INC.

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September 26, 2016

VIA CERTIFIED MAIL
RETURN RECEIPT

No. 7003 2260 0005 4600 7365

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

RE: Freedom of Information Act Request

Dear Sir or Madam:

Southeastern Legal Foundation (SLF) is one of the country's leading non-profit public interest law firms and policy centers. Now in its 40th year, SLF undertakes research on policy issues of interest to the general public. Currently, SLF is engaged in an inquiry into the Environmental Protection Agency's (EPA) Office of Environmental Justice (OEJ) including the OEJ's decision-making process and potential influence by both governmental and outside groups.

Request:

1. All communications between Lisa Garcia, former Senior Advisor to the Administrator and Associate Assistant Administrator for the US EPA and current Vice President of Litigation for Healthy Communities at Earthjustice, and any employee or agent of Earthjustice from December 2009 through March 2014. "Communications" include but are not limited to correspondence, electronic correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons.
2. All communications between Lisa Garcia, former Senior Advisor to the Administrator and Associate Assistant Administrator for the US EPA and current Vice President of Litigation for Healthy Communities at Earthjustice, and any employee or agent of the Sierra Club from December 2009 through March 2014. "Communications" include but are not limited to correspondence, electronic correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons.
3. All communications between any employee or agent of the EPA's Office of Environmental Justice and Lisa Garcia, former Senior Advisor to the Administrator and Associate Assistant Administrator for the US EPA and current Vice President of Litigation for Healthy Communities

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at Earthjustice, from March 2014 through September 26, 2016. "Communications" include but are not limited to correspondence, electronic correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons.

4. All communications between any employee or agent of the EPA's Office of Environmental Justice and any employee or agent of Earthjustice from January 2014 through September 26, 2016. "Communications" include but are not limited to correspondence, electronic correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons.

5. All communications between any employee or agent of the EPA's Office of Environmental Justice and any employee or agent of the Sierra Club from January 2014 through September 26, 2016. "Communications" include but are not limited to correspondence, electronic correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons.

Format of Production:

Pursuant to 5 U.S.C. 552(a)(3)(B), SLF requests that the EPA produce any and all responsive records electronically. Please email any and all responsive records to kherrmann@southeasternlegal.org.

SLF is willing to receive responsive records on a rolling basis, if needed, to expedite the EPA's response. If this is not possible, we would appreciate you letting us know at your earliest convenience, with an explanation of the reason for delay.

Request for Fee Waiver

This is a request for records made pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Accordingly, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) we request that the records be furnished without charge, or at reduced charged. While a court is ultimately not required to defer to an agency's interpretation of the FOIA, in anticipation of a request for additional information from the EPA, we have organized our fee waiver justification to coincide with the six factors outlined by the EPA at 40 CFR 2.107(1)(2)(i-iv) and (3)(i)-(ii).

Disclosure is in the public interest.

The first factor is satisfied because the subject of the request concerns identifiable operations or activities of the EPA's Office of Environmental Justice. "[T]he phrase 'operations and activities' should be broadly construed." 132 Cong. Rec. S16496 (Oct. 15, 1986) (Sen. Leahy). The records requested include important information regarding communications between the EPA's Office of Environmental Justice and Earthjustice, which self-describes itself as "the nation's premier environmental law organization," and the Sierra Club, which self-describes itself as "the nation's largest and most influential grassroots environmental organization." The simple

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act of “communicating” with both of these groups is an identifiable operation and activity of the EPA OEJ.

The second factor is satisfied because the requested records have significant informative value into the operations and activities of the EPA and its OEJ and are thus, “likely to contribute” in a meaningful way to public understanding of EPA’s operations and activities previously identified. The requested information provides insight into the EPA’s decision-making process regarding environmental justice including the potential expenditure of taxpayer funds, and involves communication (by establishing the existence of a meeting or conference) between the government and government employees or outside persons. Each communication between the EPA OEJ and Earthjustice and/or the Sierra Club has the potential to influence operations and activities of the EPA. Because the public is not privy to the communications between the EPA OEJ and Earthjustice and/or the Sierra Club, there current public understanding of the relationship between the organizations and how the organizations influence the EPA OEJ is limited.

However, what is known through several independent studies is that both Earthjustice and the Sierra Club do influence the EPA and the EPA OEJ. For example, a 2013 study by the U.S. Chamber of Commerce found that the Sierra Club sued the EPA and settled with the EPA 34 times from 2009 to 2012, and was often represented by Earthjustice. Those lawsuits resulted in dozens of new regulations, many of which imposed more than \$100 million in compliance costs every year. Those costs are in addition to the millions of dollars of attorneys’ fees collected by Earthjustice as a result of those lawsuits.

The third factor is satisfied because the requested records will contribute to “public understanding” because SLF will disseminate the requested information to the largest audience possible by disseminating it through the following various mediums: 1) its publicly available website (www.southeasternlegal.org) and ancillary website (www.epalawsuit.org) which combined receive nearly one million hits per year; 2) its regular mailings (averaging one mailing per week for a total of approximately three million per year) to interested parties providing educational information on environmental justice and the operations and activities of the EPA; 3) its bi-annual or quarterly newsletters to interested parties, totaling approximately ten to twenty thousand per year, also providing educational information on environmental justice and the operations and activities of the EPA; 4) regular spots on a wide-variety of radio programs; 5) spots on television programs; 6) frequent op-eds that run in national newspapers; 7) legislative testimony; 8) participation in legal and policy panels; 9) SLF’s blog – Freedom Speaks! which is prominently displayed on SLF’s primary website; 10) SLF’s Facebook page; and, 11) SLF events such as Celebrate America®. SLF’s eleven methods of dissemination, combined with its 40-year reputation as one of the nation’s leading constitutional public interest law firms and policy centers, supports granting SLF’s fee waiver request.

The fourth favor is satisfied because the requested records will “significantly” contribute to public understanding of the communications and relationship between the EPA OEJ and Earthjustice and the Sierra Club. SLF acknowledges that certain aspects of the relationship may be publicly available, but only in the “grossest sense.” *See Forest Guardians v. DOI*, 416 F.3d 1173 (10th Cir. 2005) (noting that piecemeal records available through court filings throughout

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the country, various websites, and a wide-variety of newspapers throughout the country does not make information “publicly available”). Further, the publicly available information consists merely of court filings and studies made public by independent sources – all piecemeal information insufficient to result in any meaningful understanding. The records have the potential to reveal information that is not publicly available in any meaningful way regarding the daily operations of the OEJ, influences by both governmental and outside groups, and meetings and conferences that no doubt have a significant impact on the OEJ and the EPA’s decision-making process.

No commercial interest

Disclosure of the requested records is not in the commercial interest of SLF for the following reasons. 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 and policy center specializing in the practice of constitutional law. SLF also undertakes research on policy issues of interest to the public, such as environmental justice, the undertakings of the OEJ and the OEJ and the EPA’s decision-making process.

If you deny all or any part of this request, please cite each specific exemption you think justifies your withholding of information, including 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.

Thank you in advance for your prompt attention to this request.

Sincerely,



Kimberly S. Hermann
Senior Counsel
Southeastern Legal Foundation
khermann@southeasternlegal.org
(770) 977-2131