

Exhibit 2



May 4, 2018

SUBMITTED VIA FOIAonline

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

Re: Freedom of Information Act Request for Records Regarding EPA Adoption of Unsuccessful Anti-Science Legislation

Dear National Freedom of Information Officer:

Environmental Defense Fund (“EDF”) respectfully requests records, as that term is defined at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act (“FOIA”), of the U.S. Environmental Protection Agency (“EPA” or the “Agency”), related to EPA’s consideration and implementation of ideas derived from or similar to unsuccessful House Committee on Science, Space, & Technology legislation concerning EPA’s use of science.

Specifically, EDF requests copies of correspondence that:

(1) contain any of the following terms:

- “secret science”
- “reproduc!,” not including use of the term within the phrase “no unauthorized reproductions of this document” or other similar standard disclaimers,
- “HONEST Act” or “Honest and Open New EPA Science Treatment Act”
- “replicat!”
- “computer codes”
- “causa!”
- “uncertain!”
- “dose response”
- “pivotal”
- “significant regulatory decisions”
- “transparen!”
- “independent! validat!”

(2) and has included among its sender(s) or recipient(s), or is in the custody of, any one or more of the following individuals:

- Jennifer Orme-Zavaleta
- Chris Robbins
- Bruce Rodan
- Richard Yamada
- Mary Ellen Radzikowski
- Thomas Sinks
- Jerry Blancato
- Clint Woods
- Bill Wehrum
- Ryan Jackson
- Byron Brown
- Nancy Beck
- Samantha Dravis
- Brittany Bolen
- Charlotte Bertrand
- E. Scott Pruitt
- Louis Anthony (Tony) Cox
- Drew Feeley
- Aaron Ringel

Please note that the use of “!” above is a wildcard intended to include all words that begin with the letters that precede it.

On March 20, 2018, EDF submitted a separate FOIA request seeking correspondence relating to EPA adoption of unsuccessful anti-science legislation. This earlier request, which EPA docketed as number EPA-HQ-2018-005636, covered records that were produced, modified, or transmitted between October 1, 2017 and the date that EPA began searching for records responsive to that request.

This new request covers records produced, modified, or transmitted from October 1, 2017 through the date upon which EPA begins searching for records responsive to this request, excluding any records already covered by the March 20 request (EPA-HQ-2018-005636). If any record covered by the March 20 request was subsequently modified or transmitted, such modification or transmission qualifies as a separate record for the purposes of this request, and should therefore be included among the responsive records. This request does not modify—and should not affect the processing of—the March 20 request.

The requested records specifically include, but are not limited to, hard-copy correspondence and electronic correspondence such as emails, text messages, and correspondence transmitted through any other electronic platform. This request specifically includes any attachments to responsive records.

If any of the information sought in this request is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each such

record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

Request for Expedited Processing

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 40 C.F.R. § 2.104(e)(1)(ii), which applies when there is “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” With respect to five other FOIA requests, EPA has recognized EDF’s eligibility for expedited processing on this basis.¹ In support of this request for expedited processing, I certify that the following information is true and correct to the best of my knowledge and belief:

- (1) EDF engages in extensive, daily efforts to inform the public about matters involving environmental policy. For example, EDF has multiple channels for distributing information to the public, including through direct communication with its more than 2 million members, press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets.²
- (2) On October 31, 2017, EPA Administrator Scott Pruitt announced a new policy dictating selection criteria for EPA’s federal advisory committees that instituted a requirement “that no member of an EPA federal advisory committee be currently in receipt of EPA grants, either as principal investigator or co-investigator, or in a position that would otherwise reap substantial direct benefit from an EPA grant.”³ This directive was widely reported on by the media.⁴

¹ See Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-003545 (Feb. 23, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-005587 (Apr. 12, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-008622 (July 7, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009283 (July 13, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009579 (July 26, 2017).

² See, e.g., Diane Regas, *EPA’s science is under attack: What you need to know*, EDF Blogs (Nov. 3, 2017), <https://www.edf.org/blog/2017/11/03/epas-science-under-attack-what-you-need-know>; Jennifer McPartland, *EPA is undermining the science that helps protect us from pollutants*, The Hill (Mar. 13, 2018), <http://thehill.com/opinion/energy-environment/378148-epa-is-undermining-the-science-that-helps-protect-us-from>.

³ EPA Administrator Scott Pruitt, *Strengthening and Improving Membership on EPA Federal Advisory Committees* (Oct. 31, 2017).

⁴ See, e.g., Lisa Friedman, *Pruitt Bars Some Scientists From Advising E.P.A.*, N.Y. Times (Oct. 31, 2017), <https://www.nytimes.com/2017/10/31/climate/pruitt-epa-science-advisory-boards.html>; Juliet Eilperin, *EPA’s new science advisers add more industry experts, conservatives to the mix*, The Washington Post (Nov. 4, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/11/04/pruitts-new-science-advisers-add-more-industry-experts-conservatives-to-the-mix/?utm_term=.3bcb27863145; Jennifer McPartland, Juleen Lam, and Timothy Malloy, *Why we will choose public service over politics in the Pruitt EPA*, The Hill (Jan. 30, 2018), <http://thehill.com/opinion/energy-environment/371469-why-we-will-choose-public-service-over-politics-in-the-pruitt-epa>; Suzy Khimm & Andrew Rafferty, *Pruitt Makes EPA Science Board More Industry Friendly*, NBC News (Nov. 3, 2017), <https://www.nbcnews.com/politics/white-house/pruitt-makes-epa-science-board-more-industry-friendly->

- (3) EPA's federal advisory committees serve critical functions ensuring that EPA pursues research activities,⁵ grounds its decisions in science, and has access to technical expertise to set standards that protect human health and the environment.⁶ The scientific community has suggested that this science advisory board directive may have severe implications for the quality of scientific expertise that EPA receives by eliminating scientists whom EPA deemed worthy of receiving grants and replacing them with potentially less qualified individuals, including industry-affiliated representatives more likely to have conflicts of interests.⁷
- (4) This directive in large part implements a piece of legislation, The EPA Science Advisory Board Reform Act (H.R. 1431), that has been repeatedly introduced in Congress, without success.⁸ This controversial bill would similarly prevent current EPA grant recipients from serving on EPA's Science Advisory Board and prevent them from applying for new EPA grants or contracts for three years following the end of their term.⁹
- (5) Administrator Pruitt's schedule records an April 5, 2017 meeting with Lamar Smith, Chairman of the House Science Committee and sponsor of the EPA Science Advisory Board Reform Act bill, to discuss this bill and the HONEST Act (H.R. 1430), another Smith-sponsored bill targeted at EPA's use of science.¹⁰ This meeting further suggests that Administrator Pruitt may have been influenced by the EPA Science Advisory Board Reform Act in issuing the science advisory board directive.

[n817276](#); Warren Cornwall, *Trump's EPA has blocked agency grantees from serving on science advisory panels. Here is what it means.* Science (Oct. 31, 2017), <http://www.sciencemag.org/news/2017/10/trump-s-epa-has-blocked-agency-grantees-serving-science-advisory-panels-here-what-it>.

⁵ See EPA, About the Board of Scientific Counselors (BOSC), <https://www.epa.gov/bosc>.

⁶ See, e.g., EPA, *About the Science Advisory Board (SAB) and the SAB Staff Office*,

<https://www.epa.gov/aboutepa/about-science-advisory-board-sab-and-sab-staff-office> ("A key priority for EPA is to base Agency actions on sound scientific data, analyses, and interpretations. The SAB provides a mechanism for the Agency to receive peer review and other advice designed to make a positive difference in the production and use of science at EPA.")

⁷ Michael Halpern, *The EPA Science Advisory Board Is Being Compromised. Here's Why That Matters.*, Union of Concerned Scientists Blog (Oct. 30, 2017), <https://blog.ucsusa.org/michael-halpern/the-epa-science-advisory-board-is-being-compromised-heres-why-that-matters>.

⁸ Michael Halpern, *EPA Administrator Scott Pruitt Accelerates Politicization of Agency's Science Advisory Board*, Union of Concerned Scientists Blog (Oct. 17, 2017), <https://blog.ucsusa.org/michael-halpern/epa-administrator-scott-pruitt-accelerates-politicization-of-science-advisory-board>.

⁹ David Henry, *House approves EPA science committee overhaul*, The Hill (Mar. 30, 2017), <http://thehill.com/policy/energy-environment/326472-house-approves-epa-science-committee-overhaul> ("Democrats broadly opposed Lucas's bill, saying its requirements would undermine EPA's research by allowing more industry influence over the scientific process.")

¹⁰ Michael Halpern, *EPA Administrator Scott Pruitt Accelerates Politicization of Agency's Science Advisory Board*, Union of Concerned Scientists Blog (Oct. 17, 2017), <https://blog.ucsusa.org/michael-halpern/epa-administrator-scott-pruitt-accelerates-politicization-of-science-advisory-board>; N.Y. Times, *Who Is the E.P.A. Administrator Scott Pruitt Meeting With? A Detailed Schedule* (Oct. 3, 2017), https://www.nytimes.com/interactive/2017/10/03/us/politics/document-Pruitt-Sked-and-McCarthy-Sked.html?_r=0.

- (6) A March 2018 article reported that Administrator Pruitt spoke at the Heritage Foundation about instituting science reforms at the agency that would closely reflect aspects of Rep. Lamar Smith's HONEST Act. Documents released under a separate FOIA request show that Rep. Lamar Smith was in contact with Administrator Pruitt about the HONEST Act and proposed to him that EPA internally implement portions of the HONEST Act.¹¹
- (7) The HONEST Act (H.R. 1430), previously known as the Secret Science Reform Act, has been criticized for the limitations it would place on the science EPA is able to use.¹² The scientific community has raised concerns that if the provisions in the HONEST Act were implemented at EPA, the agency would risk having to exclude sound science from its decision-making, undermining the scientific robustness of EPA's decisions.
- (8) On April 30, 2018, EPA published in the Federal Register notice of a proposed rule that would restrict EPA's ability to rely on well-established science.¹³ Despite the fact that this proposed rule would have far-reaching implications by limiting EPA's ability to rely on science as it takes actions to protect human health and the environment, the period for public comment on this proposed rule is woefully short. EPA has allowed only 30 days from publication of the Federal Register notice, setting the comment deadline as May 30, 2018.¹⁴
- (9) The records requested here are necessary to increase transparency around the basis and development of this proposed rule, which appears to have originated through meetings with external parties about which there is limited public information. Moreover, the administrative record for this rulemaking does not include any information on important impacts of this proposed rule, including implications for the number and type of studies relied upon by EPA in different contexts, or the costs that this rule would impose on the agency and researchers. The lack of transparency around the development of this proposal, and the lack of a fully developed record, inhibits the public's ability to provide informed comment. As members of the public develop comments on the proposed rule, it is essential that the relevant public records be made available so that comments can be informed by these records. Given the potential of this rule to impact EPA's ability to set life-saving protective standards and the impending May 30 comment deadline, there is an urgency to inform the public and expedited processing is appropriate in this case.

Request for Fee Waiver

As a non-partisan, non-profit organization that provides information that is in the public interest,

¹¹ Scott Waldman and Nina Heikkinen, *Smith pitched Pruitt on 'secret science.' Now it's happening*, E&E News (Apr. 20, 2018), <https://www.eenews.net/stories/1060079655>.

¹² A. A. Rosenberg et. al., *Congress's attacks on science-based rules*, 348 Science 946-966 (29 May 2015),

<http://science.sciencemag.org/content/348/6238/964.full?ijkey=mj/ZsX4l7WWEU&keytype=ref&siteid=sci> (this legislation would "limit the information that regulators can use" and "drain time and resources from rule-making processes"). See also Congressional Budget Office Cost Estimate, H.R. 1030 Secret Science Reform Act of 2015, March 11, 2015, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1030.pdf>.

¹³ *Strengthening Transparency in Regulatory Science*, 83 Fed. Reg. 18, 768 (Apr. 30, 2018).

¹⁴ *Strengthening Transparency in Regulatory Science*, 83 Fed. Reg. 18, 768 (Apr. 30, 2018).

EDF respectfully requests a waiver of fees associated with this request. As explained above, the subject of this request concerns Administrator Pruitt's consideration of new science policies at EPA, and thus clearly concerns government operations and activities. The public currently has limited information about the basis of EPA's proposed rule and whether it is contemplating additional changes in policies with regards to using science, and the requested records will shed light on the substance of any changes and how such decisions have been developed. Thus, the requested information is likely to contribute to an understanding of government operations and activity.

EDF is well positioned to disseminate the records to the public, as we routinely issue press releases, action alerts, reports, analyses, and other public outreach materials. We fully intend to disseminate newsworthy information received in response to this request. Additionally, as a science-driven organization with dozens of scientists on staff, EDF has relevant expertise to help facilitate public outreach on these issues. Thus, disclosure of the information will contribute to the general public's understanding. The contribution of the requested information to the general public's understanding will further be significant because EDF plans on widely disseminating records received from this request and informing the public about any potential science policies being considered at EPA, of which the public currently has limited awareness.

Thus, 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 we additionally are not seeking information for any commercial purpose. 5 U.S.C.

§ 552(a)(4)(A)(iii). Accordingly, we respectfully request that the documents be furnished without charge. 5 U.S.C. § 552(a)(4)(A)(iii).

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event EDF's request for a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at 202-572-3526 or by email at ssarang@edf.org.

Respectfully submitted,

Surbhi Sarang

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