

Exhibit K

Ilona Mantachian

From: Victoria Bogdan Tejeda
Sent: Tuesday, April 21, 2020 7:24 AM
To: Heise, Michael (CONTR)
Cc: Megan Hunter
Subject: FOIA HQ-2019-01247-F
Attachments: 20 04 21 DOE PTTG Constructive Denial Earthjustice.pdf

Michael,

Please see the attached letter concerning HQ-2019-01247-F. We consider DOE to have constructively denied this request and are seeking the immediately release of responsive documents. If we don't receive the documents by May 5, 2020, we will proceed accordingly.

My contact information appears at the close of the letter. Please reach out if you have questions.

Thank you,
Victoria

From: Heise, Michael (CONTR) <michael.heise@hq.doe.gov>
Sent: Tuesday, February 4, 2020 10:12 AM
To: Victoria Bogdan Tejeda <vbogdantejeda@earthjustice.org>
Subject: RE: FOIA officer gone?

Thank you for the message, Victoria.

Mr. Patel sent the responsive documents for final review to a number of equities. Although some have reviewed and responded back to Mr. Patel, there are a few equities that have yet to respond back to us. I will reach out to those entities to find out when I might receive a response from them.

If you have any question, I'd be happy to discuss this over the phone with you. I can be reached at the number below.

Michael L. Heise, Esq.
FOIA Analyst
Central Research Inc., Contractor
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585
O: (202)586-2286

From: Victoria Bogdan Tejeda [mailto:vbogdantejeda@earthjustice.org]
Sent: Tuesday, February 04, 2020 9:52 AM
To: Heise, Michael (CONTR) <michael.heise@hq.doe.gov>
Subject: [EXTERNAL] RE: FOIA officer gone?

Hi Michael,

Could you please let me know the status of HQ-2019-01247-F? I found working with Mr. Patel very easy but I haven't received an update since November 2019, when he indicated the batch of responsive documents was undergoing final review.

Thank you,
Victoria

From: Harris, Renee (CONTR) <renee.harris@hq.doe.gov>
Sent: Tuesday, February 4, 2020 9:02 AM
To: Victoria Bogdan Tejada <vbogdantejada@earthjustice.org>
Cc: michael.heise@hq.doe.gov
Subject: RE: FOIA officer gone?

Good morning Victoria,

You are correct FOIA Analyst Bhavesh Patel is no longer with DOE FOIA office. The newly assigned Analyst for this request is Mr. Michael Heise, whom I have cc'd on this email. You can direct your emails regarding this request to him going forward. Our FOIA Officer Alexander C. Morris is still with DOE.

Thank you for allowing us to assist you in this matter.

Best regards,

Renee

Renee M. Harris, Esq.
Expediter – FOIA Analyst
Central Research, Inc. Contractor
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
(202) 287-6733

From: Victoria Bogdan Tejada [<mailto:vbogdantejada@earthjustice.org>]
Sent: Monday, February 03, 2020 4:18 PM
To: Harris, Renee (CONTR) <renee.harris@hq.doe.gov>
Subject: [EXTERNAL] FOIA officer gone?

Hi Ms. Harris,

Since August 2019 I had been corresponding with a DOE FOIA officer, Bhavesh Patel. I haven't heard from him since November and wanted a status update on my request. My email bounced back, perhaps indicating Bhavesh is no longer with DOE?

Could you help me figure out the status of my request and my contact going forward? I've attached our email chain. The FOIA is HQ-2019-01247-F.

Thank you!
Victoria

From: Mail Delivery System <mailer-daemon@mailgate7.doe.gov>
Sent: Tuesday, January 21, 2020 4:12 PM
To: Victoria Bogdan Tejada <vbogdantejada@earthjustice.org>
Subject: Undelivered Mail Returned to Sender

This is the mail system at host mailgate7.doe.gov.

I'm sorry to have to inform you that your message could not be delivered to one or more recipients. It's attached below.

For further assistance, please send mail to postmaster.

If you do so, please include this problem report. You can delete your own text from the attached returned message.

The mail system

: host
usdoe-mail-onmicrosoft-com.mail.protection.outlook.com[104.47.63.36] said:
550 5.4.1 Recipient address rejected: Access denied. AS(201806281)
[DM2GCC01FT005.eop-gcc01.prod.protection.outlook.com] (in reply to RCPT TO command)

This message does not originate from a known Department of Energy email system.
Use caution if this message contains attachments, links or requests for information.

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April 21, 2020

Michael L. Heise, Esq.
FOIA Analyst
Central Research Inc., Contractor
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: FOIA Request HQ-2019-01247-F

Dear Mr. Heise:

I am writing with respect to Freedom of Information Act (FOIA) Request HQ-2019-01247-F (Request 01247-F), which Earthjustice, Ohio Valley Environmental Coalition, and Appalachian Mountain Advocates (Requesters) submitted on August 6, 2019. Pursuant to 5 U.S.C. § 552(a)(6)(A), the Department of Energy (DOE) was obligated to respond to the Request on or before September 3, 2019. More than seven months later our request remains open, despite DOE acknowledging that it possesses responsive records. We are informing you that we consider Request 01247-F to be constructively denied. 5 U.S.C. § 552(a)(6)(C). If we do not receive the requested documents by May 5, 2020, we will proceed accordingly.

Details and History of Request 01247-F

On August 6, 2019, Requesters submitted a FOIA request to DOE seeking the following:

All records dated January 1, 2019 to the date DOE begins this search that relate to DOE support of PTT Global America's planned Belmont County, Ohio petrochemical facility, including records related to investment in, and financial backing of, the PTTG facility.

In the letter, Requesters agreed to accept materials on a rolling basis. On August 16, 2019, DOE acknowledged receipt of the request and assigned it tracking number HQ-2019-01247-F.

On October 1, 2019, after Requesters emailed DOE seeking an update on the status of Request 01247-F, FOIA officer Bhavesh Patel informed Requesters that the initial search had returned 650 responsive documents. Requesters agreed to waive newsletters, publicly available reports, and attachments in order to speed processing time. On November 14, 2019, in response to Requester's check-in email, DOE indicated that the responsive documents had entered the final stage of review.

Constructive Denial of FOIA Request 01247-F

The last communication to Requesters from DOE concerning Request 01247-F occurred on February 19, 2020. In that email, you wrote to inform Requesters that you are now the officer assigned to this request. You further wrote:

Mr. Patel sent the responsive documents for final review to a number of equities. Although some have reviewed and responded back to Mr. Patel, there are a few equities that have yet to respond back to us. I will reach out to those entities to find out when I might receive a response from them.

Requesters have not heard from DOE since. While we recognize the disruptions caused by the COVID-19 crisis, it has now been six months since Requesters learned that responsive documents exist, and it has been five months since DOE indicated that these documents had entered final review.

For seven months, Requesters have communicated diligently and constructively with DOE to obtain the records we seek. DOE, however, has failed to issue a timely determination, produce records, and close the request. Accordingly, DOE has constructively denied Request 01247-F.

Constructive Denial of the Requested Records

FOIA requires an agency to issue a FOIA determination within 20 working days from the date of receipt of a records request and to immediately notify the requester of the agency's determination. 5 U.S.C. § 552(a)(6)(A)(i). An agency may extend the 20-day response period only in "unusual circumstances," *id.* § 552(a)(6)(B)(iii), and only for a maximum of ten working days. *Id.* § 552(a)(6)(B)(i). Moreover, an agency "shall process as soon as practicable any request for records to which the agency has granted expedited processing," granting expedited requests priority over other outstanding FOIA requests. *Id.* § 552(a)(6)(E)(iii). Once responsive, non-exempt records are identified under FOIA, they "shall be made promptly available." *Id.* § 552(a)(3)(A)).

To date, DOE has failed issue a determination for Request 01247-F and failed to timely produce readily available, non-exempt records. DOE was obligated to produce a determination by September 3, 2020. Yet while the agency indicated that it has responsive records in its possession, it has not "determine[d] and communicate[d] the scope" of the records it intends to produce and withhold, along with the reasons for decisions. *See Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 188 (D.C. Circuit 2013). Nor has DOE issued a final determination such that "the requester . . . can appeal whatever portion of the determination is adverse." *Id.*

An agency's failure to comply with FOIA deadlines constitutes a constructive denial of a request, and the requester's administrative remedies are deemed exhausted for purposes of litigation. 5 U.S.C. § 552(a)(6)(C). The clock for making a timely determination began running seven months ago when DOE received Request 01247-F. DOE's failure to issue a complete determination and to promptly produce responsive records is unreasonable and unlawful. Accordingly, Request 01247-F has been constructively denied.

Conclusion

In an effort to resolve this issue without litigation, we are willing to give DOE until May 5, 2020 to produce all responsive records to Request 01247-F.

Constructive Denial of FOIA Request 01247-F

If you have any questions, contact me at vbogdantejeda@earthjustice.org or 724.317.7029.

Thank you,

s/ Victoria Bogdan Tejada

Victoria Bogdan Tejada

Associate Attorney

Earthjustice

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Ph: 724.317.7029

Email: vbogdantejeda@earthjustice.org

s/ Megan Hunter

Megan Hunter

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