



Society of Environmental Journalists

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April 2, 2015

BY E-MAIL

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ADMINISTRATIVE APPEAL OF FOIA REQUEST DENIAL

FOIA Request EPA-HQ-2014-007305 (Office of the Administrator)
**FOIA Request EPA-HQ-2014-007302 (Office of External Affairs and
Environmental Education)**

Dear Mr. Gottesman:

I hereby file administrative appeals of EPA's denial of the above-captioned two Freedom of Information Act requests for records on EPA's news media policies and practices. The law gives you 20 working days to respond to this appeal.

I originally filed this request, on behalf of the Society of Environmental Journalists (SEJ), on June 10, 2014. As you know, the law normally requires agencies to "determine" within 20 working days after the receipt of a FOIA request whether it will comply with the request and notify the requester accordingly.

To date, I have received no formal response from EPA acknowledging receipt and stating what the prospects for disposition of the request might be -- much less an estimate of when it might be completed. That is an egregiously neglectful and dilatory handling of the request -- tantamount to saying that as far as EPA is concerned, the SEJ can wait forever. EPA has offered no explanation of the delay and no estimate of when it will be able to fulfil its legal obligations under FOIA.

Such a delay denies this information to the public within a timeframe that allows news relevance or agency accountability to the taxpaying public. This situation is unacceptable.



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to advance public understanding of environmental issues*

I write to insist that EPA comply with its legal obligation to respond to these two requests and to actually fulfill them by supplying responsive records. I urge you to produce records responsive to these requests as soon as possible, and no later than by the close of business on April 29, 2015 (20 working days).

As you must know, the Freedom of Information Act was meant to guarantee prompt access to important government records. To that end, the FOIA grants an agency no more than twenty working days in which to respond to a request. 5 U.S.C. § 552(a)(6). When an agency fails to respond within that statutory timeframe, it has constructively denied the request. (*Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 65 (D.C. Cir. 1990) ("Congress adopted the time limit provision in the FOIA in order to 'contribute to the fuller and faster release of information, which is the basic objective of the Act.'" (quoting H.R. Rep. No. 93 - 876, 93d Cong., 2d Sess., reprinted (1974) U.S. Code Cong. & Ad. News 6267 at 6271)). EPA's delays in responding to these two requests not only flout its statutory obligations, they also violate the President's clear direction that when it comes to public information, "openness prevails." (Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 15, 4683 (Jan. 26, 2009)). This instruction is unambiguous: "All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government."

To summarize, by this administrative appeal, I insist on behalf of the Society of Environmental Journalists that you respond to my two FOIA requests for records about EPA's news media policies. The law requires you to respond to this appeal within 20 working days -- after which my administrative remedies can be considered exhausted and legal remedies will be allowed.

I look forward to your help in resolving these matters without further delay.

Please do not hesitate to contact me directly with any questions or concerns. My phone is (301) 656-2261 and e-mail is joedavisexpress@gmail.com.

Sincerely,

Joseph A. Davis, Director, WatchDog Project
Society of Environmental Journalists

CC:

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Sen. David Vitter, Chairman, Senate Environment Committee (FAX: (202) 228-5061)

Sen. Barbara Boxer, Ranking, Senate Environment Committee (FAX: (202) 224-0454)