



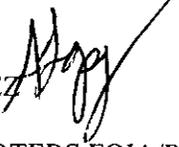
Department of Energy

Washington, DC 20585

January 15, 2002

RECEIVED BY BPA FOIA OFFICE THIS DATE: 01-23-02
DUE DATE: 02-21-02
LOG # 02-0127

MEMORANDUM TO: FREEDOM OF INFORMATION ACT OFFICERS

FROM: ABEL LOPEZ 
DIRECTOR
HEADQUARTERS FOIA/PRIVACY ACT DIVISION

SUBJECT: FOIA REQUESTS FROM REECE RUSHING AND
THOMAS B. COCHRAN

The attached Freedom of Information requests were submitted to the Department of Energy (DOE) by Reece Rushing, OMB Watch, and Thomas B. Cochran, Natural Resources Defense Council. The requests are assigned to your offices to conduct a search of the files of your office, and any other office that falls under the jurisdiction of your office. A complete response to Mr. Rushing's broader request will include everything requested by Mr. Cochran.

Please separate the responsive documents that you transmit to this office into two groups:

- 1) documents created by the DOE, or documents created by another Federal entity and received by DOE, that mention the removal of DOE documents from DOE public reading rooms, and/or the removal of web pages from DOE web sites, and
- 2) the identity of each web page that has been removed from a DOE web site since September 11, 2001.

You may provide either a copy of the title page of each web page, or a listing of those pages. If the content of the web page is not evident from the page's title, please include a one-line summary of its contents. Each web page should be described in a clear manner and that makes it distinguishable from other pages related to it.

Please follow the format on the attached sample as closely as possible in any listing of removed web pages. You can transmit the listing of documents or web pages in both hard copy and electronic form through electronic mail.

If the title page contains material that is exempt from disclosure, please provide the un-redacted page with the material to be withheld marked by brackets. You also should cite the exemption that is applicable and provide a detailed justification of how the information withheld falls within the scope of the exemption.

A certification sheet is attached for completion and return to this office. For your information, I also have attached a copy of the correspondence to the requesters from this office.

If you have any questions about this transmittal, please contact me at (202) 586-3141. Thank you for your cooperation and assistance.

Attachments



Format and Sample Listing Of Web Pages

- #. Web page entitled "*Usually the Largest Type at the Top of the Page,*" (*Any notes necessary to identify the discreet page, including references to higher levels on the page's site if the source of the page is not readily apparent on its face*). (DOE Headquarters case numbers)
1. Web page entitled "Argonne National Laboratory: A U.S. Department of Energy Laboratory Operated by the University Of Chicago," (Home Page with list of links and "What's New This Week") (F2002-00012, F2001-00649)
 2. Web page entitled "Technology Transfer at Argonne" (Argonne National Laboratory, Department Of Energy). (F2002-00012, F2001-00649)
 3. Web page entitled "Fact Sheets on Selected Argonne Science and Technology Highlights," (Argonne National Laboratory, Department Of Energy). (F2002-00012, F2001-00649)
 4. Web page entitled "Basic Research at the Advanced Photon Source," (Argonne National Laboratory, Department Of Energy). (F2002-00012, F2001-00649)
 5. Web page entitled "U.S. Department of Energy, Albuquerque Operations Office, Updated Tuesday, January 08, 2002 (Home Page). (F2002-00012, F2001-00649)
 6. Web page entitled "Mission, Vision & Performance Plan (Albuquerque Operations Office, U.S. Department of Energy)." (F2002-00012, F2001-00649)
 7. Web page entitled "Office of Management, Budget and Evaluation" (Home Page with photograph of Bruce M. Carnes and list of links, U.S. Department of Energy). (F2002-00012, F2001-00649)

The URLs for the pages above are:

1. <http://www.anl.gov/>
2. <http://www.techtransfer.anl.gov/>
3. <http://www.anl.gov/OPA/factsheets/>
4. <http://www.anl.gov/OPA/factsheets/H-20a.pdf>
5. <http://www.docal.gov/>
6. <http://www.docal.gov/Main/mission.htm>
7. <http://www.docal.gov/Main/mission.htm>



December 20, 2001

Abel Lopez
 Director, FOIA/PA Division, MA-73
 1000 Independence Ave, SW
 fax: 202/586-0575
 Washington, DC 20585

DEC 20 2001 04

"OTHER" - 2 HOURS SEARCH FREE, 100 FREE PAGES

Dear Sir or Madam:

Re: Freedom of Information Request

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I hereby request copy of (or access to) all records pertaining to the removal of information from your web site, reading rooms, depository libraries, or any other venue in which the public can retrieve government information, after the September 11th attacks on the World Trade Center and Pentagon. This includes, but is not limited to, a list of web pages removed by your agency and the general content of those pages, any guidelines used by your agency to determine whether to remove information from the web or in other ways limit public access, and any justification for any decision to remove or limit information.

I am requesting these records for non-commercial use in the public interest, and accordingly, request a waiver of fees. The public should be able to evaluate government decisions to remove information from web sites and other public access points, and any criteria used for removing, or not removing, information. Such disclosure will contribute significantly to public understanding of the operations or activities of government.

I will expect a response within 20 working days as provided by law. If my request is denied in whole or in part, I expect a detailed justification for withholding the records. I also request any segregable portions that are not exempt to be disclosed.

Thank you for your prompt attention to this matter.

Very truly yours,

Reece Rushing
 Policy Analyst

Promoting Government Accountability

1740 Connecticut Ave NW
 Washington, DC 20008

tel: 202.234.8494
 fax: 202.234.8584

email: ombwatch@ombwatch.org
 web: http://www.ombwatch.org

Original



Department of Energy
Washington, DC 20585

January 10, 2002

Reece Rushing
OMB Watch
1742 Connecticut Avenue NW
Washington D.C. 20009

Re: FOIA Request No. F2001-00649

Dear Mr. Rushing:

This is in further response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for a copy of, or access to, all records that pertain to the removal of information after September 11, 2001, from any DOE web site, reading room, depository library, or any other venue from which the public can retrieve government information. You also asked that any fees incurred to process the request be waived.

For purposes of assessment of fees, you have been categorized under the Department's regulation implementing the FOIA at Title 10, Code of Federal Regulations (CFR), Section 1004.9(b)(4), as an "other" requester. In this category, you are entitled to two hours of free search time and 100 pages at no cost.

Your request has been assigned to the Office of The Executive Secretariat to conduct a search of its files for responsive documents. In accordance with the category to which you have been designated for purposes of assessment of fees, they will conduct a search of their files for two hours. Upon completion of the search and review of any documents found, you will be provided a response.

A search for more than two hours will be conducted after (1) we have reviewed any additional information that you provide and we make a determination on your fee waiver request; or (2) you have provided us with an assurance to pay fees incurred to process the request.

The FOIA provides that "[d]ocuments shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) 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." See 5 U.S.C. 552(a)(4)(A)(iii).

The DOE has implemented this statutory standard for fee waivers or reduced fees in its FOIA regulation at 10 CFR 1004.9(a)(8). Although you have requested a waiver of fees, you have not



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adequately addressed all the criteria established in that section. The regulation sets forth the following factors that are considered by the agency in applying the criteria:

- (1) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government;"
- (2) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) The contribution to an understanding by the general public of the subject likely to result from disclosure, taking into account your ability and intent to disseminate the information to the public in a form that can further understanding of the subject matter;
- (4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;
- (5) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so
- (6) The primary interest in disclosure: Whether the magnitude of the 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."

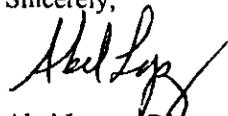
Please provide information that addresses the six factors and supports your request for a fee waiver. In the alternative, you may provide an assurance to pay fees incurred to process the request. Upon receipt of legally sufficient support for a fee waiver request or an assurance to pay fees, the Office of Environmental Management will proceed with the processing of the request.

For your information, guidance to which we refer when determining whether a fee waiver is merited can be found in "The Freedom of Information Act Guide and Privacy Act Overview," which is available on the Department of Justice's web site at <http://www.usdoj.gov/oip/foi-act.htm>. The chapter on Fee Waivers is at <http://www.usdoj.gov/oip/fees.htm#wave>. The Department's regulation implementing the FOIA is available on the Internet at http://www.access.gpo.gov/nara/cfr/waisidx_00/10cfr1004_00.html

The above referenced number has been assigned to your letter and you should refer to it in your response to this office.

I appreciate the opportunity to assist you with this matter. If you have any questions about the processing of the request or this correspondence, please contact Ms. Carol Wolf of my staff at (202) 586-3141.

Sincerely,



Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat



NATURAL RESOURCES DEFENSE COUNCIL

January 8, 2002

VIA Facsimile and First Class Mail

Mr. Abel Lopez
 Director, FOIA/Privacy Act Division, ER-73
 U.S. Department of Energy
 1000 Independence Avenue, SW
 Washington, DC 20585

OTHER - 2 HOURS SEARCH FREE, 100 FREE PAGES
 JAN 08 2002 09

Re: Freedom of Information Act Request - Removal of Documents from DOE Public Reading Rooms and Websites

Dear Mr. Lopez:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552. This Request should be directed to all relevant Department of Energy ("DOE") Offices at both Headquarters and around the DOE complex.

We hereby request, on behalf of the Natural Resources Defense Council (NRDC), the title page and/or any other appropriate identifying pages of any and all documents¹ relating to the environmental contamination, cleanup, releases, safety, criticality, non-proliferation considerations, nuclear material control and accounting, and related budgetary matters pertaining to DOE sites and facilities that have been removed from any DOE public reading rooms and from DOE's publicly available Internet websites since September 12, 2001. If you find it more convenient to provide the requested information in the form of a list or bibliography identifying the author, title, publisher document identifier and date of such documents rather than to supply the identifying pages of the actual documents, this alternative would be acceptable.

If you regard any of these documents or this information to be exempt from required disclosure under FOIA, we request that you disclose them nevertheless, as such disclosure would serve the public interest of educating citizens. See 10 C.F.R. § 1004.1 (authorizing disclosure of documents exempt from FOIA disclosure where such disclosure is in the public interest). If any of the requested documents include classified or restricted information and the volume of the material makes a lengthy declassification review necessary, we request the prompt release of all portions of the document marked Unclassified, For Official Use Only, or Declassified. In

¹ The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda; reports; studies; reviews; analyses; presentations; working papers; records; notes; letters; notices; confirmations; telegrams; receipts; appraisals; interoffice and intra-office communications; electronic mail (E-mail); contracts; cables; notations or logs of any type of conversation; telephone call, meeting or other communication; bulletins; printed matter; computer printouts; teletype; inventories; transcripts; diaries; analyses; returns; summaries; minutes; bills; accounts; estimates; projections; comparison messages; or correspondence. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

www.nrdc.org

1200 New York Avenue, NW, Suite 400
 Washington, DC 20005
 TEL 202 289-6300 FAX 202 289-1060

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FOIA Request
1/8/02
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In addition, we request that the remaining classified portions undergo a careful review for the purpose of declassification, in whole or in part, and that you release to us all reasonably segregable portions of the classified record, except those portions that could reasonably damage national security.

As you know, an agency cannot rely simply on the markings of a document to deny its release. For a document to be withheld under Exemption 1 of FOIA, it must be reviewed and found to be in fact properly classified pursuant to both procedural and substantive criteria found in the governing executive order. 5 U.S.C. § 552(b)(1)(B). See also Lesar v. U.S. Dep't of Justice, 636 F.2d 477, 483 (D.C. Cir. 1980); Southam News v. INS, 674 F. Supp. 881, 884 (D.D.C. 1987). This requires an actual, substantive review of the materials and their classification markings.

Should you decide to invoke a FOIA exemption, please include in your full or partial denial letter sufficient information for us to appeal the denial. To comport with legal requirements this information must include, inter alia:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item.
2. Explanations and justifications for denial, including the identification of the category within the governing executive order or statutory provision under which the withheld document (or portion thereof) was found to be subject to classification; at what level the entire document was ultimately classified and the nature and variety of the document's portion-marking; and, most importantly, explanations of how each exemption fits the withheld material.

NRDC is a national, non-profit, tax-exempt, public-policy research and environmental organization. We make information available to thousands of citizens by means of our numerous and varied publications, our website (www.nrdc.org), educational programs, seminars, media initiatives, and public interest litigation. The information disclosed pursuant to this request will be made available to the public and others engaged in policy analysis and research, including historians, area specialists, and journalists. NRDC has repeatedly proven its ability to disseminate the information it obtains through FOIA to large segments of the public by means of membership correspondence, publications, our website, educational programs, media initiatives, comments to administrative agencies, and congressional testimony.² Each of these means is a well-accepted avenue for disseminating information to the public in a manner that can further public understanding of policy issues similar to those at issue here. NRDC intends to use one or more of these means to educate the public concerning the information contained in the records requested here. The particular selection of means for dissemination will of course depend on the volume and content of the records that DOE provides.

FOIA permits the waiver of search and copy fees where the release of information is in the public interest. 5 U.S.C. § 552(a)(4)(A)(iii). See also 10 C.F.R. § 1004.9(a)(8). Release of the documents requested here would contribute significantly to public understanding of these matters. Moreover, NRDC has no commercial interest in obtaining this information; we instead

² We are attaching to this letter a sampling of materials revealing NRDC's past record of disseminating information to the public that was obtained from government agencies specifically in response to FOIA requests.

FOIA Request
1/8/02
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intend to make the information available to the public through the methods specified above. For these reasons we qualify for a fee waiver, and we ask that you waive all fees in connection with this request.

We appreciate your help in obtaining this information. As provided in FOIA, we will expect a reply within ten working days. If you need further information about this request or NRDC, please contact us by phone at (202) 289-6868 in order to speed consideration of this matter.

Sincerely,



Thomas B. Cochran
Director, Nuclear Program



Geoffrey H. Fettus
Attorney, Nuclear Program

Enclosures



Department of Energy
Washington, DC 20585

January 10, 2002

Thomas B. Cochran
Natural Resource Defense Council
1200 New York Avenue, NW, Suite 400
Washington D.C. 20006

Re: FOIA Request No. F2002-00012

Dear Mr. Cochran:

This is in further response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for a list of documents that DOE has removed from DOE public reading rooms and Internet web sites since September 12, 2001, that relate to "environmental contamination, cleanup, releases, safety, criticality, nonproliferation considerations, new chiller material control and accounting, and related budgetary matters, pertaining to DOE sites and facilities." You also asked that any fees incurred to process the request be waived.

For purposes of assessment of fees, you have been categorized under the Department's regulation implementing the FOIA at Title 10, Code of Federal Regulations (CFR), Section 1004.9(b)(4), as an "other" requester. In this category, you are entitled to two hours of free search time and 100 pages at no cost.

Your request has been assigned to the Office of The Executive Secretariat to conduct a search of its files for responsive documents. In accordance with the category to which you have been designated for purposes of assessment of fees, they will conduct a search of their files for two hours. Upon completion of the search and review of any documents found, you will be provided a response.

A search for more than two hours will be conducted after (1) we have reviewed any additional information that you provide and we make a determination on your fee waiver request; or (2) you have provided us with an assurance to pay fees incurred to process the request.

The FOIA provides that "[d]ocuments shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) 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." See 5 U.S.C. 552(a)(4)(A)(iii).

The DOE has implemented this statutory standard for fee waivers or reduced fees in its FOIA regulation at 10 CFR 1004.9(a)(8). Although you have requested a waiver of fees, you have not



adequately addressed all the criteria established in that section. The regulation sets forth the following factors that are considered by the agency in applying the criteria:

- (1) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government;"
- (2) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) The contribution to an understanding by the general public of the subject likely to result from disclosure, taking into account your ability and intent to disseminate the information to the public in a form that can further understanding of the subject matter;
- (4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;
- (5) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so
- (6) The primary interest in disclosure: Whether the magnitude of the 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."

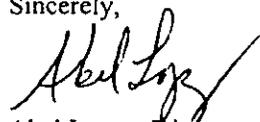
Please provide information that addresses the six factors and supports your request for a fee waiver. In the alternative, you may provide an assurance to pay fees incurred to process the request. Upon receipt of legally sufficient support for a fee waiver request or an assurance to pay fees, the Office of Environmental Management will proceed with the processing of the request.

For your information, guidance to which we refer when determining whether a fee waiver is merited can be found in "The Freedom of Information Act Guide and Privacy Act Overview," which is available on the Department of Justice's web site at <http://www.usdoj.gov/oip/foi-act.htm>. The chapter on Fee Waivers is at <http://www.usdoj.gov/oip/fees.htm#wavier>. The Department's regulation implementing the FOIA is available on the Internet at http://www.access.gpo.gov/nara/cfr/waisidx_00/10cfr1004_00.html

The above referenced number has been assigned to your letter and you should refer to it in your response to this office.

I appreciate the opportunity to assist you with this matter. If you have any questions about the processing of the request or this correspondence, please contact Ms. Carol Wolf of my staff at (202) 586-3141.

Sincerely,



Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

SHARED SERVICES

January 23, 2002

In reply refer to: CILR/4

Mr. Abel Lopez, Jr.
Director
Headquarters FOIA/Privacy Act Division

Dear Sir:

Thank you for the letter of January 15 requesting documents under provisions of the Freedom of Information Act. It has been recorded as request 02-012.

Specifically, you asked that we provide:

- (1) documents created by the DOE, or documents created by another Federal entity and received by DOE, that mention the Removal of DOE documents from DOE public reading rooms, and/or the removal of web pages from DOE web sites, and
- (2) the identity of each web page that has been removed from a DOE web site since September 11, 2001.

Mr. Michael W. Berg, Security Specialist, has been designated as Authorizing official for your request. Mr. Berg has 20 working days, until February 21, to provide a response. Should you have any question he may be reached at Mail Stop CT/1 or by calling 503 230-4274.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gene Tollefson".

Gene Tollefson
Freedom of Information Officer

Attachments

bcc:

R. Stark - CILL/1

M. Berg - CT/1

K. Dorning - DI/2

J. Bennett - LC/7

Official File - CILR (EX 13-13,02-012)

G. Tollefson - CILR/4

R. Windus - CT/1

J. O'Rourke - DI/2

C. Jacobson - LC/7

GTollefson:aal:4444:1/23/02 (CILR-H:\data\FOIA\Lopez 1.doc)