



Judicial Watch

Because no one is above the law!

January 14, 2002

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SCIENTIFIC/EDUCATIONAL NEWS MEDIA
-100 FREE PAGES

VIA CERTIFIED MAIL AND FAX

Melaine Ann Pustay
Department of Justice
Office of Information and Privacy
Suite 570, Flag Building, DOJ
Washington, DC 20530-0001

Kevin F. Cadden
Director, Office of External Affairs
Federal Energy Regulatory Commission
888 First Street, NE, Room 11H-1
Washington, DC 20426

Brenda Dolan
Department of Commerce
FOIA/PA Officer, Room 6020
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Abel Lopez
Director, FOIA/PA Division, MA-73
1000 Independence Avenue, S.W.
Washington, D.C. 20585

U. S. Treasury Department
Disclosure Services
1500 Pennsylvania Avenue, N.W., Room 1054
Washington, DC 20220

Re: Freedom of Information Act Request

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (hereinafter, "FOIA"), 5 U.S.C. 552, and its regulations, we hereby request from the Department of Justice (DOJ), US Treasury Department (Treasury), Department of Commerce (DOC), Department of Energy (DOE), Federal Energy Regulatory Commission (FERC), all correspondence, memoranda, documents, reports, records, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, facsimile logs, telephone records, call sheets, tape recordings, video recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, electronic mail, and other documents and things, that refer or relate to the following in any way:

Stick

1. Enron Chief Executive Kenneth L. Lay and Treasury Secretary Paul H. O'Neill, to include but not limited to communications on October 28, 2001 and November 8, 2001.
2. Enron Chief Executive Kenneth L. Lay and Commerce Secretary Donald L. Evans, to include but not limited to communications on October 29, 2001.
3. Communications between any and/or all Enron officers, executives, and/or employees and Treasury Undersecretary Peter R. Fisher.
4. Contacts, communications, consultations and/or requests for assistance, help, favors, information and/or consideration by Enron officers, executives, and/or employees to employees, officers and/or executives of the Federal Energy Regulatory Commission and the U. S. Departments of Treasury, Commerce, Energy and/or Justice.
5. Former Clinton Administration Treasury secretary and current chairman of the executive committee of Citigroup, Robert E. Rubin and Treasury Undersecretary Peter R. Fisher, to include but not limited to Enron Corporation.
6. Enron President Lawrence "Greg" Whalley and Treasury Undersecretary Peter R. Fisher.
7. Enron Chief Executive Kenneth L. Lay and Energy Secretary Spencer Abraham, to include but not limited to communications on November 2, 2001.
8. The decision not to take action to mitigate the harm of Enron's bankruptcy to thousands of its employees and shareholders.
9. Enron Chief Executive Kenneth L. Lay and Federal Energy Regulatory Commission Chairman Curtis Herbert, Jr., to include but not limited to communications concerning energy deregulation.
10. Contacts and/or communications by Treasury Department officials and/or employees to financial firms, to include but not limited to Goldman Sachs Group and Morgan Stanley, concerning Enron Corporation.
11. Treasury Undersecretary Peter R. Fisher and Lloyd C. Blankfein of Goldman Sachs concerning Enron Corporation.

1/15 Spoke w/ Mr. Farrell, he indicated that only
Item 7 was intended for DOE to take action
on
ACM

12. Treasury Undersecretary Peter R. Fisher and Dino Kos, the executive vice president and manager of the Federal Open Market Desk at the Federal Reserve Bank of New York concerning Enron Corporation.

Thank you for your expected cooperation in responding to our request in a timely manner, which should be within 10 working days, as required under 31 CFR § 1.5, 28 CFR § 16.5 (b), 10 USC § 1004, 15 CFR § 4.6 (b) (1), 10 CFR § 1004.5 and 5 U.S.C. § 552 (a)(6)(E)(ii)(I), because time is of the essence. The American people deserve full and complete disclosure of the matters requested herein, pertaining to the federal governments actions towards the financial collapse of the Enron Corporation, current government investigations of the collapse, and its past and present relationship with high-ranking officials of the United States government. Judicial Watch, through a variety of means and media detailed below and consistent with its legal and public education mission will rapidly and efficiently disseminate the information obtained under FOIA to the American people. In order to accomplish these aims, it is critical that the American people have this request answered in a timely manner.

Pursuant to the FOIA, if any portions of the requested documents are claimed to be privileged, those portions which are not claimed to be privileged should be provided to the undersigned. This should be done prior to the conclusion of the statutory 20-day period for response. In addition, under the FOIA there is an absolute requirement to produce those segregable portions of documents which are not claimed to be privileged, as well as a list ("Vaughn Index") that indicates by date, author, general subject matter, and claims of privilege(s) those documents, or portions thereof, which have been withheld or not provided. Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir 1973), cert. denied, 415 U.S. 977 (1974); Iglesias v. Central Intelligence Agency, 525 F. Supp. 547 (D.C. 1981); see generally LaRocca v. State Farm Mut. Auto. Ins. Co., 47 F.R.D. 278 (W.D. Pa. 1985).

We note that President Clinton instructed agencies in October, 1993, to ensure compliance with both the spirit as well as the letter of the Act. See President Clinton's FOIA Memorandum, U.S. Department of Justice, FOIA Update, Summer/Fall 1993, at 3. In addition, Attorney General Ashcroft issued a FOIA Memorandum on October, 12, 1993, which *inter alia* states "the Department of Justice and this Administration are committed to full compliance with the Freedom of Information Act. It is only through a well-informed citizenry that the leaders of our nation remain accountable to the governed and the American people can be assured that neither fraud nor government waste is concealed." and orders "a presumption of disclosure." See Attorney General Ashcroft's FOIA

Memorandum, U.S. Department of Justice, FOIA Update, Fall 2000, at p. 1.

Judicial Watch is entitled to a public interest fee waiver for this request. At 5 U.S.C. § 552 (a) (4) (A) (iif), the FOIA sets forth a two prong test to determine whether a fee waiver is appropriate. First, the disclosure must be in the public interest by contributing significantly to the public's understanding of the operations of the government. *Schrecker v. Department of Justice*, 970 F. Supp. 49, 50 (D.D.C. 1997); *Fitzgibbon v. Agency for International Development*, 724 F. Supp. 1048, 1050 (D.D.C. 1989); *Larson v. Central Intelligence Agency*, 843 F.2d 1481, 1483 (D.C. Cir. 1988). Second, the disclosure must not be primarily in the commercial interest of the requester. *Schrecker*, 970 F. Supp. at 50; *Fitzgibbon*, 724 F.2d at 1050; *Larson*, 843 F.2d at 483.

Judicial Watch is a 501 (c) (3) not-for-profit public interest organization. One of its purposes is to provide the public with information which exposes government activities that are contrary to the law. Judicial Watch is, in effect, an educational foundation, as well as a law firm, which uses several mechanisms for the dissemination of the information it acquires, and operates to ensure that this information will be made available to the public on a daily basis:

Judicial Watch, as a press entity itself¹, produces several press releases each week.

The *Judicial Watch Newsletter* has a monthly circulation of over 300,000 copies nationwide.

Judicial Watch maintains a website on which people can view copies of, among other things, FOIA documents, press releases, responsive documents, deposition transcripts and court opinions. This website is viewed by over 20,000 people per day on average, and on a few occasions, had logged up to 1,000,000 visitors in a single day.

Over 60,000 people subscribe to our "Infonet" listserv for daily updates on our lawsuits, FOIA requests, investigations and public education programs.

¹ See Memorandum and Order, *Judicial Watch, Inc. v. U.S. Department of Justice*, Civil Action No. 00-1396 (JR), Nov. 16, 2000.

Judicial Watch's Chairman has been invited to testify before Congressional committees as an expert witness on legal matters, including, but not limited to the Privacy Act and the Freedom of Information Act.

Judicial Watch's Chairman and other employees frequently appear on nationally broadcast radio and television programs to provide information, analysis and commentary concerning government corruption and other legal issues.

Judicial Watch has been credited by Courts, the Congress and various other media outlets on several occasions for uncovering information and documents concerning government corruption, illegal and/or inappropriate activities, and documented instances of government attempts to "stonewall" requests for information and accountability in the public interest.

Judicial Watch is involved in the production and broadcast of a monthly one hour news and information television program, *Public Disclosure*, fashioned after the long running news broadcast *60 Minutes*. *Public Disclosure* is syndicated across the country.

Judicial Watch produces its own twice-weekly television show and daily radio program, both entitled *The Judicial Watch Report*, which air nationwide through syndication on cable television and radio stations, as well as the Internet. *The Judicial Watch Report* 800-station radio show, launched on October 29, 1001, is hosted by broadcast veterans Russ Verney and Jane Chastain. Judicial Watch disseminates information it obtains through these mediums as well.

Judicial Watch hosts and sponsors conferences and rallies as public education forums for the dissemination of the information it acquires. For example, Judicial Watch hosted an Ethics in Government 2000 Conference at the Washington Hilton on October 20-21 2000 and an Ethics in Government 2001 International Conference,

"Fighting Corruption, Fostering Freedom," on October 5- 6, 2001 in Miami, Florida.

In short, Judicial Watch's efforts to expose government corruption make news on almost a daily basis, and it functions, in part, as a member of the media.

The subject of this request is a "breaking news" story, and of great concern to the American people and all who seek full disclosure of the reasons behind the largest bankruptcy in American history, to determine matters and issues of equal treatment under the law.

Indeed, there is an unequivocal public interest served by revealing the aforementioned documents. The American people should be made aware of, among other things, reports, investigations, decisions, waivers and findings of fact concerning the present financial collapse of the Enron Corporation, current federal investigations regarding the collapse, and its relationship with both political parties. It has now surfaced that the leaders of the Enron Corporation, and its CEO Kenneth Lay, had contact with the Energy Policy Task Force chaired by Vice President Richard Cheney, who received nearly \$2 million dollars from Enron in the 2000 election campaign. In addition former Treasury Secretary Robert Rubin contacted a Treasury Department official last fall to explore an financial intervention for collapsing Enron from the Bush Administration. Enron CEO Kenneth Lay contacted Commerce Secretary Don Evans regarding government action on behalf of Enron as well. How federal officials, many of whom have received political contributions from Enron, are currently treating the collapse and investigations of this major corporation, is of great importance to the American people and all who seek equal treatment under the law, and is thus leading the news. This information is not merely intended to satisfy the curiosity of a few. To be sure, the public is always well served when it knows how government activities, particularly matters touching on legal and ethical questions, have been conducted. This request is based, in part, on news articles. See Dana Milbank and Susan Schmidt. "Rubin Asked Treasury About Aid to Enron," *The Washington Post*. January 12, 2002; Dana Milbank and Peter Behr. "Enron Asked for Help From Cabinet Officials," *The Washington Post*. January 11, 2002; Richard Berke. "Parties Weigh Political Price of Enron's Fall," *The New York Times*. January 12, 2002; Christopher Newton. "Enron Contributed to Both Parties," Associated Press. January 12, 2002; H. Josef Herbert. "White House Blunts Enron Fallout," Associated Press. January 12, 2002. Copies of

which are enclosed with this request.²

Thus, we are convinced that the information requested will be meaningfully informative in increasing public of the relationship that government officials have with the Enron Corporation and their attitudes and actions toward its collapse and subsequent investigation. Hence, we submit this request.

Clearly, information that exposes government activity that is contrary to the rule of law will contribute significantly to the public's understanding of the operations and activities of government. In fact, according to the *Office of Management and Budget, Freedom of Information Reform Act of 1986 - Uniform Freedom of Information Act Fee Schedule Guidelines*, § 67(g), this is one of the categories of activity which courts have characterized as in the public interest.

Congress has spoken clearly on this subject by amending FOIA so that it can "be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation*, at 1284 (quoting 132 Cong. Rec. S14298 (Sept.30, 1986)). The main purpose of the amendment, according to Senator Leahy, was to prevent gamesmanship on the part of government agencies i.e., to "remove roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under FOIA." *Id.* (quoting 132 Cong. Rec. S16496, October 15, 1986).

We request expeditious handling and immediate release of the requested information in the public interest.

In accordance with 31 CFR § 1.5, 28 CFR § 16.5 (b), 10 USC § 1004, 15 CFR § 4.6 (b) (1), 10 CFR § 1004.5 and 5 U.S.C. § 552 (a)(6)(E)(ii)(I) we submit this request be granted and expedited because the information is urgently needed for dissemination so that the public may be informed about the national security and safety the actual or alleged actions of agencies of the

² Dana Milbank and Susan Schmidt. "Rubin Asked Treasury About Aid to Enron," *The Washington Post*, January 12, 2002; Dana Milbank and Peter Behr. "Enron Asked for Help From Cabinet Officials," *The Washington Post*, January 11, 2002; Richard Berke. "Parties Weigh Political Price of Enron's Fall," *The New York Times*, January 12, 2002; Christopher Newton. "Enron Contributed to Both Parties," *Associated Press*, January 12, 2002; H. Josef Herbert. "White House Blunts Enron Fallout," *Associated Press*, January 12, 2002.

Federal Government.

In addition, we find a compelling need for the requested information given that a significant part of our operation involves disseminating information as a legitimate news source. Thus, we assert that the request concerns matters of widespread and exceptional media interests in which there exist possible questions about the government's integrity (to include senior government officials) which effect public confidence.

Judicial Watch certifies that under the provisions outlined in 31 CFR § 1.5, 28 CFR § 16.5 (b), 10 USC § 1004, 15 CFR § 4.6 (b) (1), 10 CFR § 1004.5 and 5 U.S.C. § 552 (a)(6)(E)(ii)(I), we have a compelling need for information sought herein.

Release of the information will promote confidence in our Constitutional Republic, and contribute to furthering the integrity of the American national government by deterring and/or sanctioning corrupt activities. The failure to do so will likely result in the further compromise of important interests of the American people.

Sincerely,

JUDICIAL WATCH, INC.



Christopher J. Farrell

CJF/mac



Department of Energy

Washington, DC 20585

June 7, 2002

From: Sheila Jeter, Freedom of Information/Privacy Act Office (FOIA)
TO: All FOIA Officers

Power Marketing Liaison
Office of the Inspector General
Office of Public Affairs
Office of Congressional and Intergovernmental Affairs
Office of Personnel and Executive Resources
Office of Chief Financial Officer
Office of Defense Programs
Office of Energy and Efficiency and Renewable Energy
Office of Environment, Safety and Health
Office of Energy Information Administration
Office of Environmental Management
Office of Fossil Energy
Office of Nuclear Energy
Office of General Counsel
Office of Hearings and Appeals
Office of Intelligence
Office of Civilian Radioactive Waste Management
Office of Nonproliferation and National Security
Office of Security and Emergency Operations
Office of Procurement and Assistance Management
Office of Science
Office of Worker and Community Transition
Office of Finance and Accounting Policy
Office of Administration

Subject: FOIA Search for Enron Documents

The Freedom of Information Office has received several requests for information that relates to correspondence between the Enron Corporation or any of its subsidiaries, or its executives, including, but not limited to Kenneth Lay, Linda Robertson, Jeffrey Skilling, Andrew Fastow and the Department of Energy from 1992 to March 2002.

A search was conducted of the files of the Office of the Executive Secretariat, the Office of Policy and International Affairs, and the Office of the Secretary, Deputy Secretary, Under Secretary, including the Office of Scheduling.

While reviewing the documents found responsive, from the above offices, it has been determined that other offices in the department may have documents responsive to the requests. Therefore, it is requested by this office that you immediately conduct a search of your files for any documents, letters, memorandums, e-mails, public notices, and schedules, between your office and the Enron Corporation.

Please provide your response to this request by COB Thursday June 13, 2002. If you have any questions, please contact Ms. Jeter at (202) 586-5061.

RECEIVED BY BPA FOIA OFFICE THIS DATE: 6-13-02
DUE DATE: 7-13-02
LOG # 02-042

Judicial Watch



Department of Energy

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

SHARED SERVICES

June 12, 2002

In reply refer to: CILR-4

Ms. Sheila Jeter
FOIA Office
Department of Energy
Washington, D.C. 20585

Dear M. Jeter:

Thank you for the letter of June 7 requesting documents under provisions of the Freedom of Information Act. Your request has been logged in as #02-042.

Specifically, you asked for information relating to correspondence between the Enron Corporation including Kenneth Lay; Linda Robertson; Jeffrey Skilling; Andrew Fastow and others with the Department of Energy between 1992 and March 2002.

You further asked that we search our files for any documents, letters, memorandums, e-mails, public notices, and schedules, between BPA and the Enron Corporation.

Ms. Marg Nelson, Acting Chief Operating Officer, has been designated as Authorizing Official for your request. Ms. Nelson has 20 working days, until July 12, to provide a response. She may be reached at mail stop MS/D-7 or by calling 503-230-5105 should you have any questions.

Sincerely,



Gene Tollefson
Freedom of Information Officer

bcc:

S. Wright - A-7

G. Tollefson - CILR-4

S. Hickok - D-7

E. Mosey - KC-7

R. Seifert - KN-WASH

J. Bennett - LC-7

C. Jacobson - LC-7

P. Mautner - LC-7

M. Van Buren - LP-7

M. Nelson - MS/D-7

Official File - CILR (EX 13-13, 02-042)

GTollefson:aal:4444:6/12/02 (CILR-H:\data\FOIA\Jeter 1.doc)