

PUBLIC CITIZEN LITIGATION GROUP
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October 4, 2012

VIA FIRST CLASS MAIL

Alexander Morris
FOIA Officer
1000 Independence Avenue, SW
Washington, DC 20585

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RE: Freedom of Information Act Request

Dear Mr. Morris:

On behalf of Public Citizen, and pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I request:

- (1) all contracts or agreements, including but not limited to any sub-contracts or sub-agreements, between the Department of Energy ("DOE") and third-party vendors that provide security for all DOE computer networks ("third-party security vendors"), including but not limited to any networks that are accessible only to DOE employees and staff and any networks accessible to members of the public; *etc. . .*
- (2) all records that constitute or concern DOE's policies, protocols, or guidance regarding the selection and/or creation of filters to block access to websites on any DOE computer network;
- (3) all records that constitute or concern DOE's policies, protocols, or guidance regarding the designation of websites to which filters blocking access are or have been applied, including but not limited to filter(s) concerning political or activist groups, on any DOE computer network;
- (4) all records that constitute or concern DOE's policies, protocols, or guidance regarding the review and/or removal of filters that are or have been applied to websites on any DOE computer network;
- (5) all records that concern or refer to websites to which filter(s) concerning political or activist groups are or have been applied on any DOE computer network;
- (6) all records regarding DOE's application and/or removal of filters of websites, including but not limited to filter(s) concerning political or activist groups, on any DOE computer network;
- (7) all records that constitute or memorialize communications among DOE and third-party security vendors regarding filters applied to websites on any DOE computer

network, including but not limited to communications regarding implementation of DOE policies, protocols, or guidance concerning filter(s) of political or activist group websites;

(8) all records that constitute or memorialize communications among DOE and third-party security vendors regarding removal of filter(s), including but not limited to filter(s) concerning political or activist groups, on any DOE computer network;

(9) all records that constitute or memorialize communications between DOE and any DOE employee who has requested access to, and/or DOE review of, website(s) that are or have been filtered on any DOE computer network;

(10) all records that constitute or memorialize communications between DOE and non-DOE individuals or groups requesting access to, and/or DOE review of, website(s) that are or have been filtered on any DOE computer network.

The definition of "records" should be construed to include, but not be limited to, memoranda, letters, e-mails, facsimiles, notes or transcripts from meetings or telephone calls, and text messages on government-provided cell phones and Blackberries. Public Citizen is seeking records since January 1, 2011. In the case of records that may be responsive to (1) above, please disclose any contracts or agreements that were in effect as of January 1, 2011 or later.

If it is your position that records exist that are responsive to this request, but that those records (or portions of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for the denial for each record being withheld. In addition, please provide the nonexempt portions of the records.

Public Citizen requests that any records produced in response to this request be provided in electronic form wherever possible.

Public Citizen requests that all fees in connection with this FOIA request be waived because Public Citizen does not seek the records for a commercial purpose and disclosure "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 10 C.F.R. § 1004.9(a)(8) (setting forth DOE requirements for a fee waiver). The requested records implicate issues of significant interest to the public, as demonstrated by recent news reports that have highlighted the problem of selective access to information by network filters employed by federal agencies. *See Jane Hamsher, Firedoglake, Daily Kos, ACLU, and Other SOPA Critics Blocked by U.S. Patent and Trademark Office* (Sept. 19, 2012), available at <http://bytegeist.firedoglake.com/2012/09/19/firedoglake-daily-kos-aclu-and-other-sopa-critics-blocked-from-u-s-patent-and-trademark-office-wifi/>. By making this FOIA request, Public Citizen seeks to determine whether and why access to online information is or has been restricted by DOE, and, if so, to measure the extent to which this has occurred at DOE. The requested records are not currently available to the public. We expect that the responsive records will reveal whether DOE has, or previously maintained, policies denying access to the websites of

certain political and advocacy groups, including prominent consumer and civil rights groups, while allowing unfettered access to the websites of other political advocacy groups, including those that lobby the federal government on behalf of corporate interests, on its computer networks. If DOE has or had such policies, we expect that the responsive records will contain possible justifications for those policies. We also expect that the responsive records will reveal whether DOE has applied or does apply filters on its computer networks, how DOE has determined or does determine which filters will be applied on its computer networks, and which websites, if any, are or were designated political or activist for the purposes of DOE's network filters.

Public Citizen intends to share information received from this request with the public free of charge and thus does not have a commercial interest in the requested records. Public Citizen, which has 225,000 members and supporters, is a nonprofit research, litigation, and advocacy organization that represents the public interest before Congress, the executive branch, and the courts. It fights for openness and democratic accountability in government; for social and economic justice in globalization and trade policies; for clean, safe and sustainable energy; for strong health, safety and environmental protections; for safe, effective and affordable medicines and health care; and for the right of consumers to seek redress in the courts. It regularly publishes reports based upon information acquired through FOIA. Public Citizen also has a demonstrated capacity to disseminate this information. It disseminates its reports via publication, through its website, and through various newsletters that are distributed to consumers, lawyers, academics, and other interested parties free of charge. Public Citizen staff members also serve as a resource for the media and testify before Congress.

In addition, Public Citizen is entitled to a waiver of all search fees because it is a "representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii); 10 C.F.R. § 1004.9(b)(3). As noted above, Public Citizen regularly publishes reports based upon information acquired through FOIA and disseminates its reports and other products, such as fact sheets, via publications, its website, and various newsletters. It also contributes to and maintains five active blogs, including its Citizen Vox Blog, available at <http://www.citizenvox.org>. As these facts demonstrate, Public Citizen qualifies as a representative of the news media because it "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii).

Accordingly, I request that you waive all fees for locating and duplicating the requested records because Public Citizen is entitled to a public interest fee waiver. In the alternative, Public Citizen is entitled to a waiver of search and review fees based on its status as a representative of the news media and the fact that it does not seek the requested records for a commercial purpose. If, however, a waiver is not granted, then kindly advise me of the amount of any proposed search, review, and reproduction charges before you conduct those activities.

I expect a response within 20 working days as provided by law. 5 U.S.C. § 552(a)(6)(A). If you have any questions regarding this request, please contact me by phone at (202) 588-1000 or by e-mail at jpatterson@citizen.org.

Thank you very much for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jehan Patterson". The signature is written in a cursive style with a horizontal line at the end.

**Jehan Patterson
Public Citizen**