



April 22, 2019

Request submitted via foiaonline.gov

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Freedom of Information Act Request: Records Supporting Administrator Wheeler's Assertion that "Most of the Threats from Climate Change Are 50 to 75 Years Out"

Dear FOIA Officer:

Andrew Wheeler, the current Administrator of the U.S. Environmental Protection Agency ("EPA"), recently asserted in a televised interview that "most of the threats from climate change are 50 to 75 years out."¹

In light of that public pronouncement by the Administrator, and pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, Sierra Club, a non-profit public interest organization, hereby submits this request for records concerning that statement. Specifically, Sierra Club requests the following²:

- (1) All records that Administrator Wheeler relied on in asserting that "most of the threats from climate change are 50 to 75 years out"; and**
- (2) All records produced, commissioned, or otherwise obtained by EPA that support the conclusion that "most of the threats from climate change are 50 to 75 years out," other than any encompassed by (1).**

¹ See segment ~18:30-18:40 of Administrator Wheeler's interview with CBS News chief Washington correspondent, Major Garrett, aired on March 20, 2019, available at <https://www.cbsnews.com/news/epa-administrator-andrew-wheeler-exclusive-interview/> (last accessed April 22, 2019).

² For purposes of this request, "records" means records of all kinds subject to request under the FOIA, including writings (handwritten, typed, electronic, or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance, policies, telephone conversations, telefaxes, emails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other data; and includes all versions of the foregoing, including proposed, draft, pending, interim, final, or other. "EPA" includes the agency along with its employees, consultants, and agents. Sierra Club requests records in the possession, or otherwise under the control, of EPA, including the agency's National Headquarters as well as its Offices, Regions, and other subdivisions.

TIMING, FORMAT, AND DELIVERY OF RESPONSE

Please respond within 20 working days with the agency's determination of its intent to comply with this request (or within 30 working days in the event the agency were to determine that statutory unusual circumstances apply to this request and were to provide written notice of the same), as required by law. Subsequently, "promptly" provide the records requested herein, delivering the records on a rolling basis. EPA's search for, or deliberations concerning, certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See* 5 U.S.C. § 552(a)(6); 40 C.F.R. § 2.104.

When possible, please provide the requested records in an electronic .pdf format, text-searchable and OCR-formatted (portfolios and embedded files within files are not readily-accessible). If the foregoing is not possible for any particular records, provide such records in the most readily-accessible format practicable. Do not provide the records in a single or "batched" file. *See* 5 U.S.C. § 552(a)(3)(B).

In your responsive production (or rolling productions), please clearly segregate records responsive to request (1), above, from records responsive to request (2).

Deliver the records, and direct any other correspondence, to the undersigned at the following electronic and physical addresses, as applicable:

- matthew.miller@sierraclub.org

- Matthew E. Miller
Sierra Club Environmental Law Program
50 F Street NW, 8th Floor
Washington, DC 20001

CLAIMS OF EXEMPTION; FAILURE TO RESPOND

If you determine that any portions of the records requested herein are exempt from disclosure, please segregate such exempt portions and produce the non-exempt portions of such records. Provide a detailed itemization and description of any records or portions of records being withheld in whole or in part. If EPA denies all or part of this request, provide the specific reasons you believe justify your refusal to respond. *See* 5 U.S.C. § 552(b).

Please be advised that a failure by the agency to comply with its legal obligations in responding to this request may result in Sierra Club filing an action in federal court, to pursue the timely production of the requested records to the full extent provided by law. *Cf., e.g., Pub. Employees for Env'tl. Responsibility v. U.S. Env'tl. Prot. Agency*, 314 F. Supp. 3d 68 (D.D.C. 2018) (entering summary judgment against EPA and ordering the agency to respond to an analogous FOIA request that sought records supporting a statement by former Administrator Scott Pruitt during a television interview about his views on the causes of climate change).

FEE WAIVER REQUEST

Sierra Club respectfully requests that you waive all fees in connection with this request, *see* 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l), as EPA and other agencies have done on numerous occasions in connection with similar FOIA requests in the past.

Sierra Club is a non-profit organization whose purpose is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments. The nation's oldest grassroots environmental organization, Sierra Club counts more than 3.5 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy and clean water, among its other goals and activities. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment. Sierra Club has routinely received fee waivers in connection with a number of previous FOIA requests.³

The FOIA was designed to provide citizens a broad right to access government records. The statute's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, the FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups").

As explained below, the instant FOIA request satisfies the factors governing requests for waiver or reduction of fees, as well as the requirements of fee waiver under the statute—namely, that "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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l).

³ *See, e.g.*, FOIA Request Reference No. EPA-HQ-2017-8568 (fee letter waiver received June 28, 2017).

1. *The subject matter of the requested records specifically concerns identifiable operations and activities of the government.*

On its face, the instant FOIA request concerns and is limited to identifiable operations and activities of EPA and its employees.

2. *Disclosure of the requested documents will be meaningfully informative and likely to contribute to an understanding of Federal government operations or activities.*

The requested records will inform the public about whether the Administrator is making fact-based statements about important matters within his agency's purview; what those facts may be; whether the Administrator's public pronouncements are consistent with the information and conclusions of his own agency and other agencies; and whether the Administrator is leading his agency to a policy conclusion based on facts and evidence, versus other considerations. The request will allow the public to understand whether the Administrator, in making the above-quoted assertion, was relying on, or ignoring, his own agency's research and analysis on climate change—an issue of intense public concern. Learning these things will enable the public to understand the basis on which the Administrator reached his purported conclusion regarding the scientific question about the timing of the effects of climate change—including whether his pronouncement had a scientific basis, a political or other non-technical basis, or no recorded basis at all.

When Sierra Club obtains EPA's FOIA response, Sierra Club will analyze the records and present its findings, along with the records themselves, to its members, online activists, and the general public, in a manner that will meaningfully enhance the public's understanding of Administrator Wheeler's and EPA's operations and activities. The requested records are not otherwise in the public domain and are not accessible other than through a FOIA request.

Disclosure of the requested records will thus be “meaningfully informative” and “likely to contribute” to an understanding of EPA's activities and operations.

3. *Disclosure of the requested records will contribute to the understanding of the public at large, not merely the individual understanding of the requester or a narrow segment of interested persons.*

Sierra Club has long experience and deep expertise with FOIA requests, including requests related to government accountability and transparency, as well as climate policies, the Clean Air Act, the Clean Water Act, the development and use of energy resources, and other issues related to the protection of the natural environment as well as human health.

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, such as: distribution to media outlets of records and analysis thereof; distribution through publications and mailings; posting on its website; email distribution to members across the United States; and announcement and distribution at public meetings and events. Every year Sierra Club website receives dozens of millions of unique visits. *Sierra Magazine* is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. *Sierra Club*

Insider, an electronic newsletter, is sent to nearly three million people twice per month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies and through the judicial system, when appropriate.

Sierra Club intends to share the information received from this FOIA request with our impacted members across the country, the media, and our allies who share a common interest in the operations and activities of the EPA under Administrator Wheeler.

Sierra Club therefore has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the “public-at-large.”

4. Disclosure will contribute “significantly” to public understanding of government operations or activities.

Administrator Wheeler was speaking for EPA during his CBS News interview. The public should understand the factual basis supporting the Administrator’s statement and the extent to which it reflects EPA’s official posture with respect to the grave, pressing subject of climate change. As outlined above, the information to be obtained through the instant FOIA request will shed light on the informedness, quality, and integrity of EPA leadership. It will also bear directly on the consistency of EPA’s operations and activities with those of other federal agencies, in addition to consistency of the same with the data and determinations about climate change of other governments, non-governmental organizations, academia, and the scientific community at large. The records will also help the public to understand whether EPA’s climate policy either relies on, or has been divorced from, scientific research that the agency possesses.

5. The requester has no commercial interest that will be furthered by the requested disclosure.

Sierra Club has no commercial interest in the requested records, nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.⁴

In conclusion, Sierra Club respectfully requests that EPA waive processing and copying fees under 5 U.S.C. § 552(a)(4)(A). In the event you deny this fee waiver request, please send a detailed written explanation for the denial, and do not incur expenses beyond \$250 without first contacting me for explicit authorization.

⁴ Because Sierra Club has no commercial interest that would be furthered by the requested disclosure, it is unnecessary to consider the final factor for a fee waiver, which weighs an identified commercial interest against the public interest in disclosure (the latter already having been established above).

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Thank you for your cooperation with this matter. Please contact me promptly if you find this request ambiguous or problematic in any way, so that I may attempt to clarify the request or otherwise provide assistance.

Sincerely,

/s/ Matthew E. Miller

Matthew E. Miller, Esq.

Staff Attorney

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