



# AMERICANS FOR LIMITED GOVERNMENT

9900 MAIN STREET SUITE 300 - FAIRFAX, VA 22031 - PHONE: 703.383.0980 - FAX: 703.383.5200 - WWW.GETTLIBERTY.ORG

May 13, 2010

R. William Borchardt  
Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Mail Stop T-5F09  
Rockville, MD 20852-2738

FOIA/PA REQUEST

Case No.: 2010-0020A  
Date Rec'd: 5-13-10  
Specialist: Brown  
Related Case: 2010-0199

Via fax to: 301.415.5130

**Re: Freedom of Information Act (FOIA) Request # 2010-000199, Appeal of Fee Waiver Denial**

Dear Mr. Borchardt:

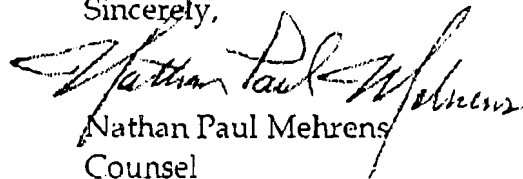
On behalf of Americans for Limited Government (ALG) I do hereby appeal the decision of Donna L. Scaling, FOIA/Privacy Act Officer in the Office of Information Services wherein she denied ALG's fee waiver request.

While I believe the analysis in the section "Request for Waiver of Fees" found on page 5 of our original request was sufficient for a conclusion that a fee waiver should be granted, I am supplying additional information to demonstrate further why the request should be granted.

Based on this additional information I request that the decision to be reversed and that ALG be granted a fee waiver for this FOIA request.

Thank you in advance for your help with this matter.

Sincerely,

  
Nathan Paul Mehrens  
Counsel

Enclosures:

- FOIA Appeal
- Fee Waiver Request Denial
- Original FOIA Request from ALG

FOIA NO. 2010-000199

---

BEFORE THE EXECUTIVE DIRECTOR FOR OPERATIONS  
U.S. NUCLEAR REGULATORY COMMISSION

---

ON APPEAL FROM THE FOIA DIVISION, OFFICE OF INFORMATION SERVICES

---

APPELLANT AMERICANS FOR LIMITED GOVERNMENT'S FREEDOM OF  
INFORMATION ACT APPEAL REGARDING DENIAL OF REQUEST FOR FEE  
WAIVER

---

Nathan Paul Mehrens  
Americans for Limited Government  
9900 Main Street  
Suite 303  
Fairfax, VA 22031  
703.383.0880 [voice]  
703.383.5288 [fax]

Counsel for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS ..... 2

STATEMENT OF FACTS ..... 3

SUMMARY OF THE ARGUMENT ..... 5

ARGUMENT ..... 5

    I. THE FEE WAIVER PROVISIONS FOUND IN THE FOIA EXIST TO FURTHER THE PUBLIC UNDERSTANDING OF THE GOVERNMENT AND ARE TO BE LIBERALLY CONSTRUED, APPELLANT'S REQUEST MEETS THE CRITERIA FOR A FEE WAIVER SET FORTH IN FOIA AND THE NRC'S REGULATIONS, THUS THE REQUEST FOR A FEE WAIVER SHOULD BE GRANTED.. 5

        A. 10 C.F.R. § 9.41(a)(2)(b)(2) EXPLANATION OF THE EXTENT TO WHICH APPELLANT WILL EXTRACT AND ANALYZE THE SUBSTANTIVE CONTENT OF THE AGENCY RECORD ..... 7

        B. 10 C.F.R. § 9.41(a)(2)(b)(3) DESCRIPTION OF THE NATURE OF THE SPECIFIC ACTIVITY OR RESEARCH IN WHICH THE AGENCY RECORDS WILL BE USED AND THE SPECIFIC QUALIFICATIONS APPELLANT POSSESSES TO UTILIZE INFORMATION FOR THE INTENDED USE IN SUCH A WAY THAT IT WILL CONTRIBUTE TO PUBLIC UNDERSTANDING ..... 8

        C. 10 C.F.R. § 9.41(a)(2)(b)(4) DESCRIPTION OF THE LIKELY IMPACT ON THE PUBLIC'S UNDERSTANDING OF THE SUBJECT AS COMPARED TO THE LEVEL OF PUBLIC UNDERSTANDING OF THE SUBJECT BEFORE DISCLOSURE ..... 8

        D. 10 C.F.R. § 9.41(a)(2)(b)(5) DESCRIPTION OF THE SIZE AND NATURE OF THE PUBLIC TO WHOSE UNDERSTANDING A CONTRIBUTION WILL BE MADE ..... 9

        E. 10 C.F.R. § 9.41(a)(2)(b)(6) DESCRIPTION OF THE INTENDED MEANS OF DISSEMINATION TO THE GENERAL PUBLIC ..... 9

CONCLUSION ..... 10

## STATEMENT OF FACTS

Appellant, Americans for Limited Government, (Appellant) filed a request under the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* with U.S. Nuclear Regulatory Commission (NRC) on April 19, 2010. A copy of that FOIA request is attached as Appendix 1.

In its FOIA request Appellant sought production from NRC of specifically described federal records regarding communications to and from NRC officials with certain named individuals.

In its FOIA request Appellant specifically requested records in categories as follows:

- I. Please provide copies of any records that exist in any of the following categories and that were created on or after January 21, 2005:
  1. All records of communications and the communications themselves between Sen. Harry Reid and Chairman Jaczko including communications from staff members working for either the Senator or Chairman;
  2. All records of meetings held between Sen. Harry Reid and Chairman Jaczko including meetings held between their respective staffs.
- II. Please provide copies of any records that exist in any of the following categories and that were created on or after January 20, 2009:
  1. All records of communications and the communications themselves between Steven Chu, U.S. Secretary of Energy, and Chairman Jaczko including communications from staff members working for either the Secretary or Chairman;
  2. All records of meetings held between Secretary Chu and Chairman Jaczko including meetings held between their respective staffs;

3. All records of communications and the communications themselves between Daniel B. Poneman, Deputy Secretary of Energy, and Chairman Jaczko including communications from staff members working for either the Deputy Secretary or Chairman;
4. All records of meetings held between Deputy Secretary Poneman and Chairman Jaczko including meetings held between their respective staffs;
5. All records of communications and the communications themselves between Daniel G. Utech, Senior Advisor to the Secretary, U.S. Department of Energy, and Chairman Jaczko including communications from staff members working for either Mr. Utech or the Chairman;
6. All records of meetings held between Mr. Utech and Chairman Jaczko including meetings held between their respective staffs;
7. All records of communications and the communications themselves between Neile L. Miller, Director, Office of Budget, Office of the Chief Financial Officer, U.S. Department of Energy, and Chairman Jaczko including communications from staff members working for either Ms. Miller or the Chairman;
8. All records of meetings held between Ms. Miller and Chairman Jaczko including meetings held between their respective staffs;
9. All records of communications and the communications themselves between Carol M. Browner, Assistant to the President for Energy and Climate Change and Chairman Jaczko including communications from staff members working for either Ms. Browner or the Chairman;
10. All records of meetings held between Ms. Browner and Chairman Jaczko including meetings held between their respective staffs.

In its FOIA request Appellant sought a fee waiver due because of the public benefit that disclosing these records will provide

The NRC FOIA Officer by letter dated April 19, 2010 and received by Appellant latter denied the fee waiver request on the grounds that "your request for waiver of fees

does not meet the criteria under 10 CFR 9.41." A copy of that denial is attached as Appendix 2. The denial of the fee waiver request held that Appellant had not met five of the eight factors found in the NRC's FOIA regulation to warrant a fee waiver.

### SUMMARY OF THE ARGUMENT

Appellant is entitled to a fee waiver because the records sought will increase the public understanding of the operations of the NRC and thus granting the fee waiver is in the public interest. Further, Appellant does not have a commercial interest in the records.

### ARGUMENT

- I. THE FEE WAIVER PROVISIONS FOUND IN THE FOIA EXIST TO FURTHER THE PUBLIC UNDERSTANDING OF THE GOVERNMENT AND ARE TO BE LIBERALLY CONSTRUED, APPELLANT'S REQUEST MEETS THE CRITERIA FOR A FEE WAIVER SET FORTH IN FOIA AND THE NRC'S REGULATIONS, THUS THE REQUEST FOR A FEE WAIVER SHOULD BE GRANTED**

The information sought by Appellant in its FOIA request will be used to better the public's understanding of how the NRC is spending the taxpayers' money. As such the public good that will occur in disclosing the information sought in and of itself weighs strongly in favor of a fee waiver. Further, the information sought 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). Appellant regularly publishes

information on the activities, structure, and operations of the federal government. This information is distributed to a large number of diverse individuals across the entire nation. The records sought are of the type which Appellant regularly provides to the public through its publications and website, [www.getliberty.org](http://www.getliberty.org). As such granting the request to waive fees is in the public interest. Further, "Congress intended that the public interest standard be liberally construed and that fees not be used as an obstacle to disclosure of requested information." (*Emphasis added.*) *Eudey v. Central Intelligence Agency*, 478 F.Supp. 1175 (D.D.C. 1979). (*Internal citations omitted.*) The central focus of the analysis in determining whether the fee waiver is in the public interest is whether the public rather than the requestor is the primary beneficiary of the release of the information. "The statute indicates that the issue to be considered by the agency is whether furnishing the information will primarily benefit the public at large or whether any benefit will inure primarily to the specific individual requesting the documents." *Id.* In the instant case the records sought will be used to further the public's understanding of the operations of the NRC. The records sought will be disseminated widely to parties interested in the workings of the government and as such will not inure primarily to the benefit of the requestor. Therefore the request for waiver of fees should be granted pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

In further support of its argument Appellant submits the following further analysis of those sections of NRC's regulation where the FOIA Officer held that Appellant's request did not meet the criteria for a fee waiver.

**A. 10 C.F.R. § 9.41(a)(2)(b)(2) EXPLANATION OF THE EXTENT TO WHICH APPELLANT WILL EXTRACT AND ANALYZE THE SUBSTANTIVE CONTENT OF THE AGENCY RECORD**

Appellant has an experienced research and legal staff who will carefully scrutinize any responsive records provided. The records sought are records of communications between politicians and officials at the NRC. Given the type of records sought it is unlikely that there is substantive information found therein that will need "extraction." As such this the "extract" prong of the "extract and analyze" factor is clearly inapplicable to the particular records sought. The records sought will improve the understanding of the public as to the decision making process of the NRC and how communications from persons outside the NRC affect those decisions. Our research and legal staff will carefully scrutinize any responsive records of communications between the named NRC personnel and outside individuals. We will compare statements made in these communications with other statements made by the individuals. We will also compare how these statements line up with official policy positions of the NRC. We will perform analysis of the timing of communications and compare the timing of communications with contemporaneous events all to better understand how these communications, if any, impacted the NRC's decision making processes during the time period specified in the FOIA request.



**B. 10 C.F.R. § 9.41(a)(2)(b)(3) DESCRIPTION OF THE NATURE OF THE SPECIFIC ACTIVITY OR RESEARCH IN WHICH THE AGENCY RECORDS WILL BE USED AND THE SPECIFIC QUALIFICATIONS APPELLANT POSSESSES TO UTILIZE INFORMATION FOR THE INTENDED USE IN SUCH A WAY THAT IT WILL CONTRIBUTE TO PUBLIC UNDERSTANDING**

As stated above, the records sought are communications between named persons. The fact that communications may have occurred is likely as probative to Appellant's research into the decision making process of the NRC as is the substantive content of any such communications. Given the positions of the named persons for which communications to and from are sought the responsive records are not likely to be technical in nature but are likely to be advocacy for a particular action. Appellant is researching how this advocacy for a particular action may have influenced decisions that were made by the NRC. Appellant's staff of skilled writers will prepare analysis of any responsive records produced and that analysis will be distributed as further discussed below.

**C. 10 C.F.R. § 9.41(a)(2)(b)(4) DESCRIPTION OF THE LIKELY IMPACT ON THE PUBLIC'S UNDERSTANDING OF THE SUBJECT AS COMPARED TO THE LEVEL OF PUBLIC UNDERSTANDING OF THE SUBJECT BEFORE DISCLOSURE**

As stated above, the records sought are communications between named persons. These communications have not previously been reported on in the public domain. As such the public has little or no current understanding of these records. Therefore any disclosure of these records will increase the public's understanding of these records. Upon receipt of the requested records Appellant will perform extensive

analysis of the communications showing how those communications (records) have impacted the decision making processes of the NRC. After completing that analysis Appellant will publish its findings using the media described below.

**D. 10 C.F.R. § 9.41(a)(2)(b)(5) DESCRIPTION OF THE SIZE AND NATURE OF THE PUBLIC TO WHOSE UNDERSTANDING A CONTRIBUTION WILL BE MADE**

Appellant speaks to a nationwide audience. Appellant maintains a daily news service that is read by tens of thousands of individuals. By way of example, on a typical day our materials are read by over 70,000 individuals. Included in that number are 9,000 editors and publishers, 8,000 bloggers, 4,000 T.V. staff, 5,000 radio talk show personnel, 3,000 political journalists, and 3,000 key individuals in positions within Washington, DC. Many of these 70,000 individuals and their respective entities republish our materials which we provide free of charge and without copyright restriction, allowing for wide dispersal of these materials. For example, within two days one of Appellant's news story items was recently re-published by over 4,500 individual news sources.

**E. 10 C.F.R. § 9.41(a)(2)(b)(6) DESCRIPTION OF THE INTENDED MEANS OF DISSEMINATION TO THE GENERAL PUBLIC**

See discussion in point "D" above. We will use these methods of dissemination in order to provide our materials to the general public. Further, these materials will also be posted to our website. In addition to the 70,000 subscribers to our news service

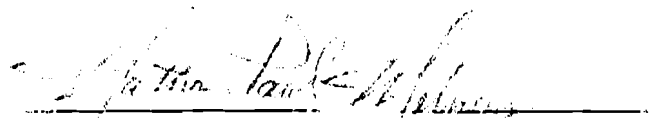
referenced above the materials on our website are viewed on average over 30,000 times per month by the general public.

## CONCLUSION

Based on the foregoing Appellant respectfully urges the Executive Director for Operations to reverse the decision of the FOIA Officer and to grant Appellant a waiver of fees for its FOIA request.

Dated this 13<sup>th</sup> day of May, 2010.

Respectfully Submitted,



Nathan Paul Mehrens  
Americans for Limited Government  
9900 Main Street  
Suite 303  
Fairfax, VA 22031  
703.383.0880 [voice]  
703.383.5288 [fax]

Counsel for Appellant



# AMERICANS FOR LIMITED GOVERNMENT

Appendix 1

9900 MAIN STREET SUITE 305 L AIDFAX VA 22031 PHONE 703.000.0000 FAX 703.584.5298 WWW.GETLIBERTY.ORG

April 19, 2010

FOIA Officer  
U.S. Nuclear Regulatory Commission  
FOIA/Privacy Officer Mailstop: T-5 F09  
Washington, DC 20555-0001

Via email to: [FOIA.resource@nrc.gov](mailto:FOIA.resource@nrc.gov)

## Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, I request on behalf of Americans for Limited Government (ALG) copies of the federal records described below. These records pertain to the communications to or from Gregory B. Jaczko, Chairman of the U.S. Nuclear Regulatory Commission (NRC).<sup>1</sup>

- I. Please provide copies of any records that exist in any of the following categories and that were created on or after January 21, 2005:
  1. All records of communications and the communications themselves between Sen. Harry Reid and Chairman Jaczko including communications from staff members working for either the Senator or Chairman;
  2. All records of meetings held between Sen. Harry Reid and Chairman Jaczko including meetings held between their respective staffs.
  
- II. Please provide copies of any records that exist in any of the following categories and that were created on or after January 20, 2009:
  1. All records of communications and the communications themselves between Steven Chu, U.S. Secretary of Energy, and Chairman Jaczko including communications from staff members working for either the

---

<sup>1</sup> For ease of reference Commissioner Jaczko is referred to herein as "Chairman" even though portions of the request predate his designation as Chairman on May 13, 2009, prior to which he served as a Commissioner.

NRC FOIA

Page 2

April 19, 2010

Secretary or Chairman;

2. All records of meetings held between Secretary Chu and Chairman Jaczko including meetings held between their respective staffs;
3. All records of communications and the communications themselves between Daniel B. Poneman, Deputy Secretary of Energy, and Chairman Jaczko including communications from staff members working for either the Deputy Secretary or Chairman;
4. All records of meetings held between Deputy Secretary Poneman and Chairman Jaczko including meetings held between their respective staffs;
5. All records of communications and the communications themselves between Daniel G. Utech, Senior Advisor to the Secretary, U.S. Department of Energy, and Chairman Jaczko including communications from staff members working for either Mr. Utech or the Chairman;
6. All records of meetings held between Mr. Utech and Chairman Jaczko including meetings held between their respective staffs;
7. All records of communications and the communications themselves between Neile L. Miller, Director, Office of Budget, Office of the Chief Financial Officer, U.S. Department of Energy, and Chairman Jaczko including communications from staff members working for either Ms. Miller or the Chairman;
8. All records of meetings held between Ms. Miller and Chairman Jaczko including meetings held between their respective staffs;
9. All records of communications and the communications themselves between Carol M. Browner, Assistant to the President for Energy and Climate Change and Chairman Jaczko including communications from staff members working for either Ms. Browner or the Chairman;
10. All records of meetings held between Ms. Browner and Chairman Jaczko including meetings held between their respective staffs.

#### **Further Definition of Records Sought**

The term "record" should be construed to mean 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, expense reports,

NRC FOIA

Page 3

April 19, 2010

books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotape, recordings and motion pictures), and electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind of nature. A record bearing any notation not a part of the original text is to be considered a separate record. A draft of a non-identical copy is to be construed as a separate record.

The term "relating" and "regarding" with respect to any given subject, should be construed to mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.

The inclusion and description of particular records in this request should not be construed to eliminate other records that are not described in particular detail if they should exist in another format.

#### **Procedure Regarding Records Exempt from Disclosure**

Given the nature of the records requested I anticipate that the vast majority of any responsive records will be of the type required to be released under FOIA. However, in the event that records exist that FOIA does not require to be released I request that they be released regardless unless the failure to release such records can be justified based upon sound reasoning related to one of the statutory exemptions or exceptions in FOIA and there is a patently manifest danger of significant harm that would occur from release of such records, *e.g.*, danger to health or safety of an individual.

Further, the NRC should be reminded of the policy in favor of disclosure mandated by President Barack Obama on January 26, 2009. President Obama instructed the executive departments and agencies to operate with a presumption towards disclosure. On this point the President stated as follows:

NRC FOIA

Page 4

April 19, 2010

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sun-light is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. Freedom of Information Act, Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4683 (January 26, 2009.)

These instructions from the President were followed up by further instructions from Attorney General Eric Holder on March 19, 2009. The Attorney General stated as follows:

First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.

Second, whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure. Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information. Even if some parts of a record must be withheld, other parts either may not be covered by a statutory exemption, or may be covered only in a technical sense unrelated to the actual impact of disclosure. The Freedom of Information Act (FOIA), Attorney General Memorandum for Heads of Executive Departments and Agencies, March 19, 2009.

Based on this policy I believe that there will be no records sought that the NRC will

NRC FOIA

Page 5

April 19, 2010

withhold. However, in the event that records are withheld I request to be provided with the following information:

1. Reason each record is not being produced;
2. Type of record withheld;
3. Subject matter of record withheld; and
4. Date, author, and addressee, if applicable of the record.

Further, I request that the above information be indexed by individual record and comply with *Vaugh v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), by providing information sufficient for a reasonable person to be able to ascertain whether the record sought is actually exempt from disclosure.

### Request for Waiver of Fees

The information sought by ALG in this FOIA request will be used to better the public's understanding of how the Department is spending the taxpayers' money. As such the public good that will occur in disclosing the information sought in and of itself weighs strongly in favor of a fee waiver. Further, the information sought 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 requestor." 5 U.S.C. § 552(a)(4)(A)(iii). ALG regularly publishes information on the activities, structure, and operations of the federal government. This information is distributed to a large number of diverse individuals across the entire nation. The records sought are of the type which ALG regularly provides to the public through its publications and website, [www.getliberty.org](http://www.getliberty.org). As such granting the request to waive fees is in the public interest. Further, "Congress intended that the **public interest standard be liberally construed** and that fees not be used as an obstacle to disclosure of requested information." (*Emphasis added.*) *Ludey v. Central Intelligence Agency*, 478 F.Supp. 1175 (D.D.C. 1979). (*Internal citations omitted.*) The central focus of the analysis in determining whether the fee waiver is in the public interest is whether the public rather than the requestor is the primary beneficiary of the release of the information. "The statute indicates that the issue to be considered by the agency is whether furnishing the information will primarily benefit the public at large or whether any benefit will inure primarily to the specific individual requesting the documents." *Id.* In the instant case the records sought will be used to further the public's understanding of the operations of the NRC. The records sought will be disseminated widely to parties interested in the workings of the government and as such will not inure primarily to the benefit of the requestor. Therefore the request for waiver of fees should be granted pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

In the event that a fee waiver is not granted, please inform me before taking any action that would result in the incurrence of fees by ALG.



NRC FOIA

Page 6

April 19, 2010

Conclusion

Pursuant to 5 U.S.C. § 552(a)(6)(A)(i) please provide the requested documents within 20 days. If for some reason all of the requested documents cannot be provided within 20 days I request that documents that are available within the 20 day time period be provided first and that when the remaining documents subsequently become available that they be provided at that time.

I request that any records disclosed pursuant to this request be indexed, to the extent feasible, in such a way as to enable the reader to readily ascertain to which number listed above the responsive records relate. If reasonably possible I request that responsive records be provided in electronic form on either unencrypted CDs or DVDs. If you have any questions as to the medium on which responsive records are to be provided please contact me in advance to sending the medium.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Please send the requested records to the following address:


Nathan Paul Mehrens  
Counsel  
Americans for Limited Government  
9900 Main Street  
Suite 303  
Fairfax, VA 22031

If you have any questions regarding this FOIA request please contact Nathan Paul Mehrens at 703.383.0880.

I look forward to your reply within 20 business days, as the statute requires. In the event that processing this request will take longer than 10 business days I request that you immediately provide me with an individualized tracking number for my request.

Thank you in advance for your assistance.

Sincerely,



William Wilson  
President



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001

Appendix 2

April 19, 2010

FOIA/PA-2010-00199

Nathan Paul Mehrens  
For William Wilson  
Americans for Limited Government  
9900 Main Street, Suite 303  
Fairfax, VA 22031

Dear Requester:

We received your Freedom of Information Act/Privacy Act (FOIA/PA) request on April 19, 2010.

Your request has been assigned the following reference number that you should use in any future communications with us about your request: **FOIA/PA-2010-00199**

To ensure the most equitable treatment possible of all requesters, the NRC processes requests on a first-in, first-out basis, using a multiple track system based upon the estimated time it will take to process the request. Based on your description of the records you are seeking, we estimate completion of your request will be within 20 working days. We will advise you of any change in the estimated time to complete your request.

For purposes of assessing fees in accordance with our regulations (10 CFR 9.33), we have placed your request in the following category: **Non-Exempted**. If applicable, you will be charged appropriate fees for: **Search and Duplication of Records**.

A sheet has been enclosed that explains in detail the fee charges that may be applicable. **Please do not submit any payment unless we notify you to do so.**

You requested that fees be waived for your request and I have determined that your request for a wavier of fees does not meet the criteria required under 10 CFR 9.41 (copy attached) for the reasons shown on the attached fee waiver denial notice. You may appeal this determination. Any such appeal must be made in writing within 30 calendar days by addressing the appeal to the Executive Director for Operations.

The following person is the FOIA/PA Specialist who has been assigned responsibility for your request: **Natalie Brown at 301-415-6878.**

If you have questions on any matters concerning your FOIA/PA request please feel free to contact the assigned FOIA/PA Specialist or me at (301) 415-7169.

Sincerely,

/S/

Donna L. Sealing  
FOIA/Privacy Act Officer  
Office of Information Services

- Enclosures:  
Incoming Request  
Explanation of Fees  
Fee Wavier Denial Notice



FOIA/PA-2010-0199

**Factor (1): Describe the purpose for which the requester intends to use the requested information.**

This factor has been met.

**Factor (2): Explain the extent to which the requester will extract and analyze the substantive content of the agency records.**

The request as written does not fully explain how you will extract and analyze the substantive content of the records you seek. **This factor has not been met.**

**Factor (3): Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to the public understanding.**

You say that you are seeking the information "...to better the public's understanding of how the Department is spending the taxpayers' money..." but you do not address what qualifications you possess to utilize the information you seek or how you plan to use that information to contribute to the public's understanding. **This factor has not been met.**

**Factor (4): Describe the likely impact on the public's understanding of the subject as compared to the level of public understanding of the subject before disclosure.**

The request as written does not address this factor. **This factor has not been met.**

**Factor (5): Describe the size and nature of the public to whose understanding a contribution will be made.**

You do not describe the size and nature of the public. **This factor has not been met.**

**Factor (6): Describe the intended means of dissemination to the general public.**

Although you state that "...ALG regularly publishes information on the activities, structure, and operations of the federal government..." you do not identify any specific publications in which you intend to disseminate the information, nor whether you have an agreement with any entities to publish the information. Posting information on a website does not guarantee the public will read it. **This factor has not been met.**

**Factor (7): Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee.**

You do not address this factor. **This factor has been met.**

**Factor (8): Describe any commercial or private interest the requester or any other party has in the agency records sought.**

This factor has been met.



AMERICANS FOR LIMITED GOVERNMENT

9900 BAHNSDRIFT SUITE 303 • FARMAN, VA 22031 • PHONE 703.383.0880 • FAX 703.383.5288 • WWW.GIFTLIBERTY.ORG

# Fax

To: R. William Borchardt From: Nathan Paul Mehrens  
 Fax: 301.415.5130 Pages: 21  
 Phone: \_\_\_\_\_ Date: 05/13/10  
 Re: FOIA Appeal cc: \_\_\_\_\_

Urgent  For Review  Please Comment  Please Reply  Please Recycle

• Comments:

See following documents.