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**From:** Chapman, Linda G. <Linda.Chapman@Science.doe.gov>  
**Sent:** Monday, May 22, 2017 4:45 PM  
**To:** FOIA Resource  
**Subject:** [External\_Sender] ORO-2017-00996-F FOIA REQUEST  
**Attachments:** NUREG.NSIC-141.pdf

**Importance:** High

Dear Sir/Madame:

In response to the subject FOIA request, we found a report that was prepared by the Oak Ridge National Laboratory for the Nuclear Regulatory Commission (NRC). Therefore, since this report contains NRC equities, I have attached it to this e-mail for NRC review on its releasability. The FOIA request was transferred to you on April 25, 2017, by a letter from Alexander C. Morris, DOE HQ FOIA Officer located in Washington, DC. The HQ FOIA request number referenced in that letter is HQ-2017-00747-F. I look forward to hearing from you. Thank you for your assistance in this matter.

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ORNL/NUREG/NSIC-141

# **SUMMARY DATA for U.S. COMMERCIAL NUCLEAR POWER PLANTS in the UNITED STATES**

**Fred A. Heddleson**

Prepared for the U.S. Nuclear Regulatory Commission  
Office of Nuclear Regulatory Research  
Under Interagency Agreements DOE 40 551 75 and 40 552 75

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**SUMMARY DATA FOR  
U.S. COMMERCIAL NUCLEAR POWER PLANTS  
IN THE UNITED STATES**

**Fred A. Haddleson  
Engineering Technology Division**

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\* The four page numbers given refer to Tables 1, 2, 3, and 4, respectively.



## FOREWORD

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## **SUMMARY DATA FOR U.S. COMMERCIAL NUCLEAR POWER PLANTS**

**Fred A. Heddleson  
Engineering Technology Division**

### **ABSTRACT**

A compilation of data is presented for all United States commercial nuclear power plants for which a construction permit application was made through the Nuclear Regulatory Commission. The data are compiled in four separate tables with cross-referencing indexes: Table 1 - General Data; Table 2 - Reactor Data; Table 3 - Site Data, and Table 4 - Circulating-Water System Data. The power plants are listed in numerical order by docket number in all four tables.

### **1. INTRODUCTION**

This report is a compilation of data for all United States commercial nuclear power plants for which construction permit applications were made through the Nuclear Regulatory Commission (NRC). The data are taken from licensing applications and are listed herein in four tables:

Table 1. General Data: This table gives the docket number, plant name, type [e.g., pressurized-water reactor (PWR) or boiling-water reactor (BWR)], size in MW(e), the nuclear steam supply system (NSSS) manufacturer, the architect-engineer (A-E), the containment type, and the status of the plant as of December 1977.

Table 2. Reactor Data: This table presents data on reactor performance related mostly to system pressure, number of circulating coolant loops, heat output, fuel enrichment, fuel burnup, and the weight of uranium or  $UO_2$  in the core.

Table 3. Site Data: Included in this table are the plant name, location, size of site, nearest metropolis together with distance and direction from the plant site, the exclusion distance, low-populations-zone distance, safe-shutdown-earthquake (SSE) design value, and the population within 2 miles of the plant together with the year of the population data.

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Table 4. Circulating-Water System Data: Listed in this table are the type of cooling system used, the nearby water makeup, condenser flow, temperature rise in the condenser,  $\text{gpm/MW(e)} \times ^\circ\text{F}$  (an index number that is discussed later), and the number and type of cooling towers where they are used.

The same spacing is used in all four tables; thus, if a specific plant is found near the middle of the third page of one table, it will be found in the same relative position in the other three tables. For example, Prairie Island 1 appears near the bottom of page 1 of Table 1, and it is also listed in the same position on page 1 of Tables 2, 3, and 4.

Abbreviations have been used to conserve space and permit more data to be presented on each table. These abbreviations are defined in the footnotes on the last page of each table.

Table 1. General data<sup>a</sup>

Docket number	Name	Type	Size [MW(e) net]	WSSS wfr.	A-E	Cont. type <sup>b</sup>	Status
50-3	Indian Point 1	PWR	265	B&W	Owner	1a	Op-62
50-10	Dresden 1	BWR	200	GE	Bech	1	Op-59
50-29	Yankee-Rose	PWR	175	West.	S&W	1	Op-60
50-133	Rumholdt Bay	BWR	65	GE	Bech	c	Op-63
50-155	Big Rock Point	BWR	72	GE	Bech	1	Op-62
50-171	Peach Bottom 1	HTCR	40	GA	Bech	2	Op-66 <sup>d</sup>
50-206	San Onofre 1	PWR	450	West.	Bech	1	Op-67
50-213	Conn. Yankee	PWR	575	West.	S&W	3	Op-67
50-219	Oyster Creek 1	BWR	650	GE	B&R	4a	Op-69
50-220	Nine Mile Point 1	BWR	610	GE	Owner	4a	Op-69
50-237	Dresden 2	BWR	809	GE	S&L	4a	Op-70
50-244	Ginna 1	PWR	490	West.	GII	3	Op-69
50-245	Millstone 1	BWR	690	GE	Ebasco	4a	Op-70
50-247	Indian Point 2	PWR	873	West.	UE&C	3	Op-73
50-249	Dresden 3	BWR	809	GE	S&L	4a	Op-71
50-250	Turkey Point 3	PWR	745	West.	Bech	3	Op-72
50-251	Turkey Point 4	PWR	745	West.	Bech	3	Op-73
50-254	Quad-Cities 1	BWR	809	GE	S&L	4a	Op-71
50-255	Faliscades	PWR	821	Comb.	Bech	3	Op-71
50-259	Browns Ferry 1	BWR	1065	GE	TVA	4a	Op-73
50-260	Browns Ferry 2	BWR	1065	GE	TVA	4a	Op-74
50-261	Robinson 2	PWR	700	West.	Ebasco	3	Op-70
50-263	Monticello	BWR	545	GE	Bech	4a	Op-70
50-265	Quad-Cities 2	BWR	809	GE	S&L	4a	Op-72
50-266	Point Beach 1	PWR	497	West.	Bech	3	Op-70
50-267	Fort St. Vrain	HTCR	330	GA	S&L		Op-77
50-269	Oconee 1	PWR	886	B&W	Owner	3	Op-73
50-270	Oconee 2	PWR	886	B&W	Owner	3	Op-73
50-271	Vermont Yankee	BWR	515	GE	Ebasco	4a	Op-72
50-272	Salem 1	PWR	1090	West.	Owner	3	Op-76
50-275	Diablo Canyon 1	PWR	1084	West.	Owner	3	Const-78
50-277	Peach Bottom 2	BWR	1065	GE	Bech	4a	Op-73
50-278	Peach Bottom 3	BWR	1065	GE	Bech	4a	Op-73
50-280	Surry 1	PWR	822	West.	S&W	3d	Op-72
50-281	Surry 2	PWR	822	West.	S&W	3d	Op-73
50-282	Prairie Island 1	PWR	530	West.	Pion	2a	Op-73
50-285	Fort Calhoun 1	PWR	458	Comb.	G&H	3	Op-73
50-286	Indian Point 3	PWR	965	West.	UE&C	3	Op-76

Table 1.<sup>a</sup> (p. 2)

Boat number	Name	Type	Size (RM(e) mt)	SSS mfr.	A-E	Const. type <sup>b</sup>	Status
50-287	Oconee 3	PWR	886	B&W	Owner	3	Op-74
50-289	Three Mile Island 1	PWR	792	B&W	G11	3	Op-74
50-293	Pilgrim 1	BWR	687	GE	Bech	4a	Op-72
50-295	Zion 1	PWR	1050	West.	S&L	3	Op-73
50-296	Browne Ferry 3	BWR	1065	GE	TVA	4a	Op-76
50-298	Cooper Station	BWR	778	GE	B&W	4a	Op-74
50-301	Point Beach 2	PWR	497	West.	Bech	3	Op-72
50-302	Crystal River 3	PWR	855	B&W	G11	3	Op-77
50-303	Crystal River 4	PWR	855	B&W	G11	3	Withdrawn
50-304	Zion 2	PWR	1050	West.	S&L	3	Op-73
50-305	Emmensee	PWR	560	West.	Pion	2a	Op-74
50-306	Prairie Island 2	PWR	530	West.	Pion	2a	Op-74
50-309	Maine Yankee	PWR	790	Comb.	S&W	3	Op-72
50-311	Salon 2	PWR	1115	West.	Owner	3	Const-79
50-312	Sancho Seco	PWR	913	B&W	Bech	3	Op-74
50-313	Arkansas Nuclear 1	PWR	850	B&W	Bech	3	Op-74
50-315	Cook 1	PWR	1090	West.	Owner	3c	Op-75
50-316	Cook 2	PWR	1090	West.	Owner	3c	Const-78
50-317	Calvert Cliffs 1	PWR	845	Comb.	Bech	3	Op-75
50-318	Calvert Cliffs 2	PWR	845	Comb.	Bech	3	Op-76
50-319	Bell	BWR	866	GE	UE&C	5a	Withdrawn
50-320	Three Mile Island 2	PWR	906	B&W	B&W	3	Const-74
50-321	Hatch 1	BWR	786	GE	SSI	4a	Op-74
50-322	Shoreham	BWR	819	GE	S&W	5a	Const-79
50-323	Diable Canyon 2	PWR	1106	West.	Owner	3	Const-78
50-325	Brunswick 2	BWR	821	GE	UE&C	5a	Op-75
50-324	Brunswick 1	BWR	821	GE	UE&C	5a	Op-77
50-327	Sequoyah 1	PWR	1148	West.	TVA	2ac	Const-78
50-328	Sequoyah 2	PWR	1148	West.	TVA	2ac	Const-78
50-329	Midland 1	PWR	460	B&W	Bech	3	Const-82
50-330	Midland 2	PWR	808	B&W	Bech	3	Const-81
50-331	Deane Arnold	BWR	538	GE	Bech	4a	Op-74
50-333	Fitzpatrick	BWR	821	GE	S&W	4a	Op-74
50-334	Beaver Valley 1	PWR	852	West.	S&W	3	Op-76
50-335	St. Lucie 1	PWR	810	Comb.	Ebasco	2a	Op-76
50-336	Hillstone 2	PWR	828	Comb.	Bech	3b	Op-75
50-338	North Anna 1	PWR	898	West.	S&W	3d	Op-77
50-339	North Anna 2	PWR	898	West.	S&W	3d	Const-78



Table 1.<sup>1</sup> (p. 3)

Docket number	Name	Type	Size [MW(e) net]	WSSS mfr.	A-E	Const. type <sup>b</sup>	Status
50-340	Seabrook	PWR	920	West.	Ebasco	2a	Withdrawn
50-341	Fernal 2	BWR	1093	GE	S&L	4a	Const-80
50-342	Indian Point 4	BWR	1115	GE	Owner	4a	Withdrawn
50-343	Indian Point 5	BWR	1115	GE	Owner	4a	Withdrawn
50-344	Trojan	PWR	1130	West.	Bech	3	Op-75
50-346	Davis-Besse 1	PWR	906	B&W	Bech	2a	Op-77
50-348	Farley 1	PWR	829	West.	Bech	3	Op-77
50-352	Limerick 1	BWR	1065	GE	Bech	5a	Const-83
50-353	Limerick 2	BWR	1065	GE	Bech	5a	Const-85
50-354	Hope Creek 1	BWR	1067	GE	Bech	4a	Const-84
50-355	Hope Creek 2	BWR	1067	GE	Bech	4a	Const-86
50-358	Zimmer 1	BWR	810	GE	S&L	5	Const-78
50-359	Zimmer 2	BWR	1170	GE	S&L	5	Cancelled
50-361	San Onofre 2	PWR	1100	Comb.	Bech	3	Const-80
50-362	San Onofre 3	PWR	1100	Comb.	Bech	3	Const-81
50-363	Forked River 1	PWR	1070	Comb.	B&W	3	Const-83
50-364	Farley 2	PWR	829	West.	Bech	3	Const-79
50-366	Hatch 2	BWR	795	GE	SSI	4a	Const-78
50-367	Sailly	BWR	645	GE	S&L	5a	Indefinite
50-368	Arkansas 2	PWR	950	Comb.	Bech	3	Const-78
50-369	McGuire 1	PWR	1180	West.	Owner	5a	Const-79
50-370	McGuire 2	PWR	1180	West.	Owner	5a	Const-80
50-373	La Salle 1	BWR	1078	GE	S&L	5a	Const-79
50-374	La Salle 2	BWR	1078	GE	S&L	5a	Const-80
50-376	North Coast	PWR	583	West.	G&H	3b	Cancelled
50-382	Waterford 3	PWR	1113	Comb.	Ebasco	2a	Const-81
50-383	Waterford 4	PWR	1113	Comb.	Ebasco	2a	Withdrawn
50-387	Susquehanna 1	BWR	1050	GE	Bech	5a	Const-80
50-388	Susquehanna 2	BWR	1050	GE	Bech	5a	Const-81
50-389	St. Lucie 2	PWR	810	Comb.	Ebasco	2a	Const-83
50-390	Watts Bar 1	PWR	1177	West.	TVA	2ac	Const-79
50-391	Watts Bar 2	PWR	1177	West.	TVA	2ac	Const-80
50-395	Summer 1	PWR	900	West.	Gil	3	Const-80
50-397	WPPSS-2 (Hanford 2)	BWR	1103	GE	B&W	4a	Const-80
50-398	Mendocino 1	BWR	1168	GE	Bech	4a	Withdrawn
50-399	Mendocino 2	BWR	1168	GE	Bech	4a	Withdrawn

Table 1. <sup>a</sup> (p. 4)

Docket number	Name	Type	Size [MW(e) net]	NSSS afr.	A-E	Const. type	Status
50-400	Harris 1	PWR	900	West.	Ebasco	3	Const-83
50-401	Harris 2	PWR	900	West.	Ebasco	3	Const-85
50-402	Harris 3	PWR	900	West.	Ebasco	3	Const-89
50-403	Harris 4	PWR	900	West.	Ebasco	3	Const-87
50-404	North Anna 3	PWR	907	B&W	S&W	3d	Const-82
50-405	North Anna 4	PWR	907	B&W	S&W	3d	Const-83
50-409	LaCrosse	BWR	50	AC	S&L	2	Op-67
50-410	Nine Mile Point 2	BWR	1100	GE	S&W	5a	Const-82
50-412	Beaver Valley 2	PWR	852	West.	S&W	3	Const-82
50-413	Catawba 1	PWR	1150	West.	Owner	3c	Const-81
50-414	Catawba 2	PWR	1150	West.	Owner	3c	Const-83
50-416	Grand Gulf 1	BWR	1250	GE	Bech	5a <sup>e</sup>	Const-81
50-417	Grand Gulf 2	BWR	1250	GE	Bech	5a <sup>e</sup>	Const-83
50-423	Hillstone 3	PWR	1156	West.	S&W	3b	Const-86
50-424	Vogtle 1	PWR	1113	West.	SSI & Bech	3b	Const-85
50-425	Vogtle 2	PWR	1113	West.	SSI & Bech	3b	Const-86
50-426	Vogtle 3	PWR	1113	West.	Bech	3b	Canceled
50-427	Vogtle 4	PWR	1113	West.	Bech	3b	Canceled
50-434	Surry 3	PWR	859	B&W	Bech	3d	Canceled
50-435	Surry 4	PWR	859	B&W	Bech	3d	Canceled
50-438	Bellefonte 1	PWR	1213	B&W	TVA	3b	Const-80
50-439	Bellefonte 2	PWR	1213	B&W	TVA	3b	Const-81
50-440	Perry 1	BWR	1205	GE	GIL	5a <sup>e</sup>	Const-81
50-441	Perry 2	BWR	1205	GE	GIL	5a <sup>e</sup>	Const-83
50-443	Seabrook 1	PWR	1200	West.	UE&C	3a	Const-82
50-444	Seabrook 2	PWR	1200	West.	UE&C	3a	Const-84
50-445	Comanche Peak 1	PWR	1150	West.	G&H	3	Const-80
50-446	Comanche Peak 2	PWR	1150	West.	G&H	3	Const-82
50-448	Douglas Point 1	BWR	1178	GE	Ebasco	5a <sup>e</sup>	Deferred
50-449	Douglas Point 2	BWR	1178	GE	Ebasco	5a <sup>e</sup>	Deferred
50-450	Summit 1	HTCR	766	CA	UE&C	3	Canceled
50-451	Summit 2	HTCR	766	CA	UE&C	3	Canceled
50-452	Greenwood 2	PWR	1200	B&W	Bech	3	Plan-83
50-453	Greenwood 3	PWR	1200	B&W	Bech	3	Plan-85
50-454	Byron 1	PWR	1120	West.	SSL	3	Const-81
50-455	Byron 2	PWR	1120	West.	S&L	3	Const-82
50-456	Braidwood 1	PWR	1120	West.	S&L	3	Const-81
50-457	Braidwood 2	PWR	1120	West.	S&L	3	Const-82

Table 1. (p. 5)

Docket number	Name	Type	Size [MW(e) net]	NSSS sfr.	A-E	Const. type <sup>b</sup>	Status
50-458	River Bend 1	BWR	934	GE	S&W	5a <sup>e</sup>	Const-81
50-459	River Bend 2	BWR	934	GE	S&W	5a <sup>e</sup>	Const-83
50-460	WPPSS 1	PWR	1218	B&W	UE&C	3	Const-81
50-461	Clinton 1	BWR	933	GE	S&L	5a <sup>e</sup>	Const-81
50-462	Clinton 2	BWR	933	GE	S&L	5a <sup>e</sup>	Const-88
50-463	Fulton 1	HTCR	1160	GA	S&W	3	Cancelled
50-464	Fulton 2	HTCR	1160	GA	S&W	3	Cancelled
50-466	Allens Creek 1	BWR	1150	GE	Ebasco	5a <sup>e</sup>	Indefinite
50-467	Allens Creek 2	BWR	1150	GE	Ebasco	5a <sup>e</sup>	Cancelled
50-471	Pilgrim 2	PWR	1180	Comb.	Bech	3	Plan-82
50-472	Pilgrim 3	PWR	1180	Comb.	Bech	3	Plan-82
50-475	Quanicassee 1	PWR	1200	West.	Bech	3	Withdrawn
50-476	Quanicassee 2	PWR	1200	West.	Bech	3	Withdrawn
50-477	Atlantic Floating 1	PWR	1150	West.	Owner	2a	Plan-84
40-478	Atlantic Floating 2	PWR	1150	West.	Owner	2a	Plan-86
50-482	Wolf Creek	PWR	1150	West.	Bech	3	Const-83
50-483	Callaway 1	PWR	1120	West.	Bech	3	Const-82
50-484	Tyrone 1	PWR	1150	West.	Bech	3	Plan-85
50-485	Sterling 1	PWR	1150	West.	Bech	3	Const-?
50-486	Callaway 2	PWR	1120	West.	Bech	3	Indefinite
50-487	Tyrone 2	PWR	1150	West.	Bech	3	Indefinite
50-488	Perkins 1	PWR	1280	Comb.	Owner	1a	Plan-85
50-489	Perkins 2	PWR	1280	Comb.	Owner	1a	Plan-87
50-490	Perkins 3	PWR	1280	Comb.	Owner	1a	Plan-89
50-491	Cherokee 1	PWR	1280	Comb.	Owner	1a	Const-83
50-492	Cherokee 2	PWR	1280	Comb.	Owner	1a	Const-85
50-493	Cherokee 3	PWR	1280	Comb.	Owner	1a	Const-88
50-496	Montague 1	BWR	1150	GE	S&W	5a <sup>e</sup>	Plan-86
50-497	Montague 2	BWR	1150	GE	S&W	5a <sup>e</sup>	Plan-88
50-498	South Texas 1	PWR	1250	West.	B/R	3	Const-80
50-499	South Texas 2	PWR	1250	West.	B/R	3	Const-82
50-500	Davis-Besse 2	PWR	906	B&W	Bech	2a	Const-85
50-501	Davis-Besse 3	PWR	906	B&W	Bech	2a	Const-87
50-502	Koshkonong 1 (Haven)	PWR	900	West.	S&W	3	Plan-87 <sup>f</sup>
50-503	Koshkonong 2 (Haven)	PWR	900	West.	S&W	3	Plan-89 <sup>f</sup>
50-508	WPPSS 3	PWR	1242	Comb.	Ebasco	2a	Const-83
50-509	WPPSS 5	PWR	1242	Comb.	Ebasco	2a	Const-85

Table 1.1 (p. 6)

Docket number	Name	Type	Size [MW(e) net]	NSSS mfr.	A-E	Cmnt. type	Status
50-510	Blue Hills 1	PWR	918	Comb.	Bech	3	Plan-89
50-511	Blue Hills 2	PWR	918	Comb.	Bech	3	Plan-89
50-513	WPPSS 4	PWR	1218	B&W	UE&C	3	Const-83
50-514	Pebble Springs 1	PWR	1260	B&W	Bech	3	Plan-85
50-515	Pebble Springs 2	PWR	1260	B&W	Bech	3	Plan-88
50-516	Jamesport 1	PWR	1150	West.	S&W	3d	Plan-84
50-517	Jamesport 2	PWR	1150	West.	S&W	3d	Plan-86
50-518	Hartsville 1	BWR	1280	GE	TVA	5a <sup>e</sup>	Const-82
50-519	Hartsville 2	BWR	1280	GE	TVA	5a <sup>e</sup>	Const-83
50-520	Hartsville 3	BWR	1280	GE	TVA	5a <sup>e</sup>	Const-82
50-521	Hartsville 4	BWR	1280	GE	TVA	5a <sup>e</sup>	Const-83
50-522	Skagit 1	BWR	1277	GE	Bech	5a <sup>e</sup>	Plan-84
50-523	Skagit 2	BWR	1277	GE	Bech	5a <sup>e</sup>	Plan-86
50-524	Barton 1	BWR	1159	GE	SSI	5a <sup>e</sup>	Indefinite
50-525	Barton 2	BWR	1159	GE	SSI	5a <sup>e</sup>	Indefinite
50-526	Barton 3	BWR	1159	GE	SSI	5a <sup>e</sup>	Cancelled
50-527	Barton 4	BWR	1159	GE	SSI	5a <sup>e</sup>	Cancelled
50-528	Palo Verde 1	PWR	1237	Comb.	Bech	3	Const-83
50-529	Palo Verde 2	PWR	1237	Comb.	Bech	3	Const-84
50-530	Palo Verde 3	PWR	1237	Comb.	Bech	3	Const-86
50-537	Clinch River	LHFBR	350	West.	B&R	2	Plan-?
50-538	San Joaquin		1300				Uncertain
50-546	Marble Hill 1	PWR	1130	West.	S&L	3	Const-82
50-547	Marble Hill 2	PWR	1130	West.	S&L	3	Const-84
50-548	Pt. Calhoun 2	PWR	1134	West.	G&H	3	Cancelled
50-549	Greene County	PWR	1191	B&W	S&W	3b	Plan-84
50-553	Phipps Bend 1	BWR	1233	GE	TVA	5a <sup>e</sup>	Const-84
50-554	Phipps Bend 2	BWR	1233	GE	TVA	5a <sup>e</sup>	Const-84
50-556	Black Fox 1	BWR	1150	GE	B&V	5a <sup>e</sup>	Plan-83
50-557	Black Fox 2	BWR	1150	GE	B&V	5a <sup>e</sup>	Plan-85
50-566	Yellow Creek 1	PWR	1285	Comb.	TVA	1a	Plan-84
50-567	Yellow Creek 2	PWR	1285	Comb.	TVA	1a	Plan-85
50-568	NEP 1	PWR	1150	West.	UE&C	3	Plan-84
50-569	NEP 2	PWR	1150	West.	UE&C	3	Plan-85
50-580	Erie 1	PWR	1260	B&W	G11	3	Plan-88
50-581	Erie 2	PWR	1260	B&W	G11	3	Plan-88
50-582	Sundessert 1	PWR	960	West.	S&W	3	Plan-85
50-583	Sundessert 2	PWR	960	West.	S&W	3	Plan-87

Table 1.<sup>a</sup> (p. 7)<sup>a</sup> Abbreviations used:

A-E	=	architect-engineer
B/R	=	Brown & Root
B&R	=	Burns & Roe
B&V	=	Black & Veatch
B&W	=	Babcock & Wilcox
Bech	=	Bechtel Corp.
BWR	=	boiling-water reactor
Cont	=	containment
Comb.	=	Combustion Engineering
Const-78	=	Plant is under construction; scheduled startup date is 1978.
Ebasco	=	Ebasco Services, Inc.
G&H	=	Gibbs & Hill
GA	=	General Atomic Co.
GE	=	General Electric Co.
GII	=	Gilbert Associates
HTGR	=	high-temperature gas-cooled reactor
LMFBR	=	liquid-metal fast-breeder reactor
NSSS	=	nuclear steam-supply system
Op-71	=	Plant is in operation; startup date was 1971.
Pion	=	Pioneer Service
Plan-85	=	Plant is being planned or is in the initial licensing state; estimated startup is 1985.
PWR	=	pressurized-water reactor
S&L	=	Sargent & Lundy
S&W	=	Stone & Webster
SSI	=	Southern Service, Inc.
TVA	=	Tennessee Valley Authority
UE&C	=	United Engineers & Contractors
West.	=	Westinghouse Electric Corp.

Table 1.<sup>a</sup> (p. 8)<sup>b</sup> Nomenclature for containment design:

## Dry containment

Type 1 - steel sphere

Type 2 - steel cylinder

Type 3 - reinforced concrete cylinder with steel liner

## Pressure-suppression containment

Type 4 - steel dry well and wet well

Type 5 - reinforced concrete dry well and wet well with steel liner

Mark III - General Electric Co. containment design

## Features

a - secondary containment, reinforced concrete shield building, for types 1 and 2

b - secondary containment, steel enclosure building, for type 3

c - ice condenser

d - subatmospheric

<sup>c</sup> Steel dry well, reinforced concrete wet well with steel liner<sup>d</sup> Shut down in 1974.<sup>e</sup> Mark III<sup>f</sup> Koshkonong site is being moved to Haven, 5 miles north of Sheboygan, and will be on Lake Michigan. The name has been changed to Haven.

Table 2. Reactor data

Name	Reactor system pressure (psia)	Number of coolant loops	Average heat flux (Btu/hr-ft <sup>2</sup> )	Maximum thermal output (kW/ft)	Enrichment <sup>a</sup>	Burnup <sup>b</sup>	Wt. of uranium in core (lb)
Indian Point 1	1350	4	133,600	12.5	2.86	10,650	53,460
Dresden 1	1000	4	91,820	15.0	1.50	10,000	120,806
Yankee-Rowe	2015	4	141,000	9.4	4.00	7,800	45,936
Humboldt Bay	1150		129,600	15.0	2.50	18,000	35,640UO <sub>2</sub>
Big Rock Point	1335		146,000	18.0	2.50	11,700	19,250UO <sub>2</sub>
Peach Bottom 1	350	2	69,000	23	Avg. burnup	77,000 U + Th	787 U 4,370 Th
San Onofre 1	2100	3	143,350	15.0	3.15	14,500	126,060
Conn. Yankee	2000	4	136,400	14.3	3.02	16,952	165,660UO <sub>2</sub>
Oyster Creek 1	1020	5	129,632	17.2	2.10	15,000	242,645
Nine Mile Point 1	1030	2	130,500	17.5	2.10	15,000	231,000
Dresden 2	1015	2	131,850	17.5	2.12	19,000	200,640UO <sub>2</sub>
Clinna 1	2250	2	150,500	16.5	2.44	21,800	117,527UO <sub>2</sub>
Millstone 1	1035	2	130,000	17.5	2.07	15,000	249,480
Indian Point 2	2250	4	175,600	18.4	2.20	14,200	189,420
Dresden 3	1015	2	131,860	17.5	2.12	19,000	200,640UO <sub>2</sub>
Turkey Point 3	2250	3	171,600	17.9	1.85	13,000	341,660UO <sub>2</sub>
Turkey Point 4							
Quad-Cities 1	1000	2	131,200	17.5	1.85	13,000	270,600
Palisades	2100	2	142,400	17.60	1.65	10,180	196,240
Browns Ferry 1	1020	2	163,234	18.35	2.19	19,000	327,571
Browns Ferry 2							
Robinson 2	2250	3	171,600	17.90	1.85	14,500	154,220
Monticello	1025	2	131,350	17.50	2.25	19,000	209,660
Quad-Cities 2	1000	2	131,200	17.50	2.12	19,000	270,600
Point Beach 1	2250	2	175,800	16.00	2.27	15,100	118,729UO <sub>2</sub>
Fort St. Vrain	~700	2	45,000		Avg. burnup	100,000 U + Th	2,409 U 42,240 Th
Oconee 1	2200	2	171,470	17.63	2.25	9,600	182,600
Oconee 2							
Vermont Yankee	1020	4	163,296	18.37	2.40	19,085	157,740
Salem 1	2250	4	207,000	18.90	2.20	12,000	415,360
Diablo Canyon 1	2250	4	207,000	18.90	2.20	12,000	427,020UO <sub>2</sub>
Peach Bottom 2	1020	2	163,230	18.35	2.19	19,000	326,700
Peach Bottom 3							
Surry 1	2250	3	191,100	17.30	1.85	12,600	155,320
Surry 2							
Prairie Island 1	2250	2	191,000	17.30	2.27	15,200	211,000
Fort Calhoun 1	2100	2	167,400	17.60	1.39	9,300	107,791
Indian Point 3	2250	4	193,000	17.50	2.25	14,700	215,358UO <sub>2</sub>

Table 2. (p. 2)

Name	Reactor system pressure (psia)	Number of coolant loops	Average heat flux (Btu/hr-ft <sup>2</sup> )	Maximum thermal output (kW/ft)	Enrichment <sup>a</sup>	Burnup <sup>b</sup>	Wt. of uranium in core (lb)
Oconee 3	2200	2	171,400	17.63	2.25	14,250	182,600UO <sub>2</sub>
Three Mile Island 1	2200	2	171,470	17.63	2.62 Avg.	14,250	182,600UO <sub>2</sub>
Pilgrim 1	1020	2	145,490	17.50	2.19	19,000	247,102
Zion 1	2250	4	207,900	18.80	2.25	14,040	417,780UO <sub>2</sub>
Browns Ferry 3	1020	2	163,234	18.35	2.19	19,000	327,571
Cooper Station	1020	2	164,500	18.50	2.17	19,000	266,200UO <sub>2</sub>
Point Beach 2	2250	2	175,800	16.00	2.27	15,100	118,729UO <sub>2</sub>
Crystal River 3	2200	2	163,725	16.83	1.93	12,850	204,820UO <sub>2</sub>
Crystal River 4							
Zion 2	2250	4	207,900	18.80	2.25	14,040	417,700UO <sub>2</sub>
Kewaunee	2250	2	191,000	17.30	2.27	15,200	231,378UO <sub>2</sub>
Prairie Island 2	2250	2	191,000	17.30	2.27	15,200	182,600UO <sub>2</sub>
Maine Yankee	2235	3	171,400	16.90	2.01	12,895	179,388UO <sub>2</sub>
Salem 2	2250	4	207,000	18.90	2.20	12,000	415,360
Rancho Seco	2185	2	185,090	19.00	2.57 Avg.	14,250	204,600UO <sub>2</sub>
Arkansas Nuclear 1	2200	2	171,470	17.63	2.62 Avg.	14,400	204,820
Cook 1	2250	4	207,900	18.80	2.25	14,000	417,780UO <sub>2</sub>
Cook 2							
Calvert Cliffs 1	2200	3	176,000	17.80	2.09	13,775	192,279UO <sub>2</sub>
Calvert Cliffs 2							
Bell	1005	2	164,734	18.30	2.23	19,000	240,610
Three Mile Island 2	2200	2	171,470	17.63	2.62 Avg.	14,250	182,600UO <sub>2</sub>
Hatch 1	1020	2	144,740	18.50	2.23	19,000	228,173
Shoreham	1005	2	164,734	18.37	2.29	16,680	260,568UO <sub>2</sub>
Diablo Canyon 2	2250	4	207,000	18.90	2.20	12,000	427,020UO <sub>2</sub>
Brunswick 2	1005	2	164,740	18.50	2.25	19,000	
Brunswick 1							
Sequoyah 1	2250	4	217,200	18.80	2.20	13,780	417,780UO <sub>2</sub>
Sequoyah 2							
Midland 1	2200	2	163,725	16.83	2.30	13,540	200,640UO <sub>2</sub>
Midland 2							
Duane Arnold	1020	2	163,933	18.50	2.25	18,350	155,650UO <sub>2</sub>
Fitzpatrick	1020	2	164,734	18.50	2.23	19,000	269,720UO <sub>2</sub>
Beaver Valley 1	2250	3	207,600	17.90	2.00	14,500	341,660UO <sub>2</sub>
St. Lucie 1	2250	2	162,000	17.40	1.80	11,900	182,270
Millstone 2	2250	2	169,600	18.20	1.80	11,900	182,279UO <sub>2</sub>
North Anna 1	2250	3	207,600	17.90	2.00	14,500	345,180UO <sub>2</sub>
North Anna 2							



Table 2. (p. 3)

Name	Reactor system pressure (psia)	Number of coolant loops	Average heat flux (Btu/hr-ft <sup>2</sup> )	Maximum thermal output (kW/ft)	Enrichment <sup>a</sup>	Burnup <sup>b</sup>	Wt. of uranium in core (lb)
Sesbrook	2250	3	207,600	17.90	2.00	13,500	176,200U <sub>2</sub>
Fermi 2	1020	2	163,229	18.40	2.25	19,250	372,112U <sub>2</sub>
Indian Point 4	1020	2	163,229	18.40	2.20	19,250	372,110U <sub>2</sub>
Indian Point 5							
Trojan	2250	4	217,200	18.80	2.04	14,800	218,367U <sub>2</sub>
Davis-Besse 1	2200	2	175,810	17.80	2.32	13,686	204,820
Farley 1	2250	3	207,600	18.80	2.0	13,100	178,000U <sub>2</sub>
Limerick 1	1020	2	163,230	18.35	2.19	19,000	371,304U <sub>2</sub>
Limerick 2							
Hope Creek 1	1020	2	163,230	18.35	2.25	19,000	372,112
Hope Creek 2							
Zimmer 1	1020	2	164,734	18.54	1.80	19,000	280,484U <sub>2</sub>
Zimmer 2							
San Onofre 2	2250	2	205,100	18.50	1.90	13,138	235,110U <sub>2</sub>
San Onofre 3							
Forked River 1	2250	2	205,100	18.50	1.90	13,138	235,110U <sub>2</sub>
Farley 2	2250	3	207,600	18.80	2.00	13,100	178,000U <sub>2</sub>
Hatch 2	1020	2	164,740	18.50	2.23	19,000	228,173
Bailly 1	1020	2	164,707	18.50	1.80	19,000	217,560U <sub>2</sub>
Arkansas 2	2250	2	204,800	18.50	2.00	12,000	183,640U <sub>2</sub>
McGuire 1	2250	4	217,200	18.80	2.25	14,000	222,739U <sub>2</sub>
McGuire 2							
La Salle 1	1020	2	126,910	18.50	1.80	19,000	371,304U <sub>2</sub>
La Salle 2							
North Coast	2250	2	206,100	18.80	2.27	15,200	124,267U <sub>2</sub>
Waterford 3	2250	2	205,100	18.50	1.90	13,138	235,110U <sub>2</sub>
Waterford 4							
Susquehanna 1	1020	2	163,230	18.35	2.19	19,000	371,304U <sub>2</sub>
Susquehanna 2							
St. Lucie 2	2250	2	162,000	17.40	1.80	11,900	182,270
Watts Bar 1	2250	4	217,200	18.80	2.03	14,000	222,739U <sub>2</sub>
Watts Bar 2							
Summer 1	2250	3	217,300	18.80	2.00	13,700	181,205U <sub>2</sub>
WPPSS-2 (Hanford 2)	1020	2	163,234	18.50		20,870	370,988U <sub>2</sub>
Mendocino 1	1020	2	164,718	18.50	1.85	18,512	370,988U <sub>2</sub>
Mendocino 2							

Table 2. (p. 4)

Name	Reactor system pressure (psia)	Number of coolant loops	Average heat flux (Btu/hr-ft <sup>2</sup> )	Maximum thermal output (kW/ft)	Enrichment <sup>a</sup>	Burnup <sup>b</sup>	Wt. of uranium in core (lb)
Harris 1							
Harris 2	2250	3	217,300	18.80	1.90	11,900	177,400UO <sub>2</sub>
Harris 3							
Harris 4							
North Anna 3	2250	2	214,000	19.20	2.53 Avg.	13,810	177,000UO <sub>2</sub>
North Anna 4							
Lacrosse	1300	2	109,100		3.63	12,700	17,300
Nine Mile Point 2	1020	2	164,380	18.50		19,000	
Beaver Valley 2	2250	3	207,600	18.80	2.00	13,700	176,200UO <sub>2</sub>
Catawba 1	2235	4	217,200	16.90	2.25	14,000	~217,000UO <sub>2</sub>
Catawba 2							
Grand Gulf 1	1040	2	159,732	13.40		27,500	326,301
Grand Gulf 2							
Hillstone 3	2250	4	217,200	16.70	2.25	14,000	~217,000UO <sub>2</sub>
Vogtle 1							
Vogtle 2	2235	4	217,200	16.90	2.25	14,000	~217,000UO <sub>2</sub>
Vogtle 3							
Vogtle 4							
Surry 3	2250	2	214,000	19.20	2.80 Avg.	14,204	165,052UO <sub>2</sub>
Surry 4							
Bellefonte 1	2250	2	197,000	17.61	2.42	16,790	233,350UO <sub>2</sub>
Bellefonte 2							
Perry 1	1040	2	159,570	13.40	2.07	12,800	304,600
Perry 2							
Seabrook 1	2250	4	217,200	16.90	2.25	14,000	~217,000UO <sub>2</sub>
Seabrook 2							
Comanche Peak 1	2250	4	217,200	16.90	2.25	14,000	~217,000UO <sub>2</sub>
Comanche Peak 2							
Douglas Point 1	1040	2	159,570	13.40	2.07	13,000	304,600
Douglas Point 2							
Summit 1	695	4	66,000	6.80		19,400	2,720 U 57,376 Th
Summit 2							
Greenwood 2	2250	2	197,000	17.60	2.79 Avg.	16,790	233,120UO <sub>2</sub>
Greenwood 3							
Byron 1	2250	4	217,200	16.90	2.25	14,000	~217,000UO <sub>2</sub>
Byron 2							
Braidwood 1	2250	4	217,200	16.90	2.25	14,000	~217,000UO <sub>2</sub>
Braidwood 2							

Table 2. (p. 5)

Name	Reactor system pressure (psia)	Number of coolant loops	Average heat flux (Btu/hr-ft <sup>2</sup> )	Maximum thermal output (kW/ft)	Enrichment <sup>a</sup>	Burnup <sup>b</sup>	Wt. of uranium in core (lb)
River Bend 1	1040	2	159,550	13.40	1.70	~13,000	246,390
River Bend 2							
WPPSS 1	2250	2	186,822	14.74	2.77 Avg.	16,056	233,884
Clinton 1	1040	2	159,550	13.40	1.70	~13,000	246,390
Clinton 2							
Fulton 1	720	6	65,030	7.0	93.15 Uranium	22,300	3,795 U 82,470 Th
Fulton 2							
Allens Creek 1	1040	2	159,580	13.40	2.07	13,000	304,600
Allens Creek 2							
Pilgrim 2	2250	2	184,000	12.60	2.40	12,600	223,900
Pilgrim 3							
Quoniacassee 1	2250	4	217,200	18.80	2.03	14,000	217,00000;
Quoniacassee 2							
Atlantic Floating 1	2250	4	189,800	12.60	2.10	14,600	222,739
Atlantic Floating 2							
Wolf Creek	2250	4	217,200	18.80	2.03	14,000	253,675
Callaway 1	2250	4	217,200	18.80	2.03	14,000	253,675
Tyrone 1	2250	4	217,200	18.80	2.03	14,000	253,675
Sterling 1	2250	4	217,200	18.80	2.03	14,000	253,675
Callaway 2	2250	4	217,200	18.80	2.03	14,000	253,675
Tyrone 2	2250	4	217,200	18.80	2.03	14,000	253,675
Perkins 1							
Perkins 2	2250	2	182,200	12.5	1.90	13,740	317,131
Perkins 3							
Cherokee 1							
Cherokee 2	2250	2	182,200	12.50	1.90	13,740	317,131
Cherokee 3							
Montague 1	1040	2	159,550	13.40	2.07	~13,000	304,600
Montague 2							
South Texas 1	2250	4	185,200	13.30	2.10		253,675
South Texas 2							
Davis-Besse 2	2200	2	166,613	12.85	2.54 Avg.	14,866	201,520
Davis-Besse 3							
Koshkonong 1 (Haven)	2250	3	189,800	13.90	2.10	11,000	181,205
Koshkonong 2 (Haven)							
WPPSS 3	2250	2	182,200	12.5	1.90	13,740	260,520
WPPSS 5							

Table 2. (&gt; 6)

Name	Reactor system pressure (psia)	Number of coolant loops	Average heat flux (Btu/hr-ft <sup>2</sup> )	Maximum thermal output (kW/ft)	Enrichment <sup>a</sup>	Burnup <sup>b</sup>	Wt. of uranium in core (lb)
Blue Hills 1	2250	2	182,200	12.5	1.90	12,500	183,640
Blue Hills 2							
WPPSS 4	2250	2	186,822	14.74	2.77 Avg.	16,056	233,884
Pebble Springs 1	2250	2	186,800	14.74	2.95 Avg.	17,700	233,884
Pebble Springs 2							
Jamesport 1	2250	4	217,200	16.90	2.25	11,500	218,000
Jamesport 2							
Hartsville 1							
Hartsville 2	1040	2	159,570	13.4	2.07	~13,000	304,200
Hartsville 3							
Hartsville 4							
Skagit 1	1055	2	146,260	12.30	1.80	~13,000	351,912
Skagit 2							
Barton 1							
Barton 2	1040	2	159,570	13.40	2.07	~13,000	304,600
Barton 3							
Barton 4							
Palo Verde 1							
Palo Verde 2	2250	2	182,200	12.50	1.90	13,740	226,116
Palo Verde 3							
Clinch River	136	3		11.00		50,000	
San Joaquin							
Marble Hill 1	2250	4	189,800	12.60	2.10	14,000	222,739
Marble Hill 2							
Ft. Calhoun 2	2250	4	189,800	12.60	2.10	14,000	222,739
Greene County	2250	2	186,820	14.41	2.83 Avg.	19,631	233,884
Shippe Bend 1	1040	2	159,570	13.40	2.07	~13,000	304,200
Shippe Bend 2							
Black Fox 1	1040	2	159,570	13.40	2.07	~13,000	304,200
Black Fox 2							
Yellow Creek 1	2250	2	182,200	12.5	1.90	13,740	226,116
Yellow Creek 2							
NEP 1	2250	4	189,400	13.0	2.10	14,200	222,739
NEP 2							
Erie 1	2235	2	197,151	15.2	2.67 Avg.	15,281	233,677
Erie 2							
Sundcoert 1	2250	3	189,800	12.6	2.10	11,000	181,205
Sundcoert 2							

Table 2. (p. 7)

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<sup>a</sup>  
FAR - Region 1 enrichment (Z).  
EAR - Initial enrichment (Z).  
<sup>b</sup>  
FAR - average 1st cycle burnup (MM/MTU).  
EAR - average discharge exposure (MWD/ton).

Table 3. Site data<sup>a</sup>

Name	Location	Site size (acres)	Nearest metropolis, dist., dir.	Population within 2 miles	Exclusion distance (miles)	LPZ (miles)	SSE (g)
Indian Point 1	SE-NY	739	New York-25 mi S	9,300-1972	0.27	0.7	
Dresden 1	NE-IL	953	Chicago-47 mi NE	50-1968	0.50		
Yamkee-Rose	MA-MA	2,000	Pittsfield-25 mi SSW	229-1970	0.59	5	
Rimboldt Bay	MA-CA	143	San Francisco-230 mi SSE	1,700-1960	0.13		0.25
Big Rock Point	MI-MI	600	Saginaw-160 mi SSE	70-1960	0.51	4	0.75
Peach Bottom 1	SE-PA	620	Lancaster-19 mi N	685-1970	0.57	18	0.05
San Onofre 1	S-CA	84	San Diego-50 mi SE	500-1980			0.50
Conn. Yamkee	SC-CT	525	Meridian-16 mi WNW	1,937-1970	0.32		0.17
Oyster Creek 1	EC-NJ	1,425	Atlantic City-35 mi SSW	2,514-1970		2	0.22
Wine Mile Point 1	NC-NY	900	Syracuse-35 mi SSE	279-1970	0.76	4	0.11
Dresden 2	NE-IL	953	Chicago-47 mi NE	50-1968	0.50		0.20
Glass 1	NY-NY	338	Rochester-20 mi SW	860-1970	0.29	3	0.20
Milstone 1	SE-CT	500	Hartford-38 mi NW	4,776-1970	0.40	3	0.17
Indian Point 2	SE-NY	239	New York-25 mi S	21,700-1975	0.20	0.6	0.15
Dresden 3	NE-IL	953	Chicago-47 mi NE	50-1968	0.50		0.20
Turkey Point 3	SE-FL	3,300	Miami-25 mi NNE	0-1976	0.79	5	0.05
Turkey Point 4							
Quad-Cities 1	MA-IL	404	Davenport-18 mi SW	280-1970	0.50	3	0.12
Palisades	SW-MI	487	Kalamazoo-34 mi ESE	313-1970	0.44		0.20
Brown Ferry 1	NC-AL	840	Montville-30 mi E	208-1970	0.75	7	0.20
Brown Ferry 2							
Robinson 2	NE-SC	5,000	Columbia-56 mi SW	1,375-1976	0.27	4.5	0.20
Monticello	SC-MN	1,325	Minn.-St. Paul-33 mi SE	150-1970	0.40	1	0.12
Quad-Cities 2	MA-IL	404	Davenport-18 mi SW	280-1970	0.50	3	0.12
Point Beach 1	EC-WI	1,260	Green Bay-27 mi NW	270-1975	0.74	5.6	0.12
Fort St. Vrain	NC-CO	2,238	Denver-35 mi S	150-1970	1	1	0.10
Oconee 1	NC-SC	500	Greenville-26 mi E	886-1910	1	6	0.10
Oconee 2							
Vernon Yamkee	SC-VT	125	Holyoke-40 mi S	2,060-1970	0.17	5	0.14
Solan 1	SW-NJ	700	Wilmington-20 mi N	0-1980	0.18	5	0.15
Diablo Canyon 1	SW-CA	750	Santa Barbara-100 mi SE	4-1970	0.50	6	0.20
Peach Bottom 2	SE-PA	620	Lancaster-19 mi N	685-1970	0.51		0.12
Peach Bottom 3							
Surry 1	SE-VA	840	Newport News-17 mi ESE	7-1970	0.31	3	0.15
Surry 2							
Prairie Island 1	SE-MN	560	Minn.-St. Paul-30 mi NW	347-1970	0.43	1.5	0.12
Fort Calhoun 1	EC-NE	380	Omaha-19 mi SSE	820-1980	0.23	5	0.17
Indian Point 3	SE-NY	239	New York-25 mi S	21,700-1975	0.20	0.6	0.15

Table 3.<sup>a</sup> (p. 2)

Name	Location	Site size (acres)	Nearest metropolis, dist.-dir.	Population within 2 miles	Exclusion distance (miles)	LPZ (miles)	SSE (g)
Oconee 3	WC-SC	500	Greenville-26 mi E	886-1910	1	6	0.10
Three Mile Island 1	SE-PA	625	Harrisburg-10 mi NW	2,700-1969	0.38	2	0.12
Pilgrim 1	SE-MA	517	Brockton-22 mi NW	1,524-1972	0.33	1.5	0.15
Zion 1	NE-IL	250	Kenosha-8 mi N	25,600-1985	0.25		0.17
Browns Ferry 3	NC-AL	840	Huntsville-30 mi E	208-1970	0.75	7	0.12
Cooper Station	SE-NE	1,090	Lincoln-60 mi NW	41-1970			0.10
Point Beach 2	EC-WI	1,260	Green Bay-27 mi NW	270-1970	0.74	5.6	0.12
Crystal River 3	WC-FL	4,738	Tampa-75 mi S	0-1967	0.83	5	0.10
Crystal River 4							
Zion 2	NE-IL	250	Kenosha-8 mi N	25,600-1985	0.25		0.17
Kewaunee	EC-WI	957	Green Bay-26 mi NW	193-1985			0.12
Prairie Island 2	SE-MN	560	Minn.-St. Paul-30 mi NW	374-1970	0.43	1.5	0.12
Maine Yankee	SC-NE	740	Portland-34 mi SW	379-1970	0.83		0.10
Salem 2	SW-NJ	700	Wilmington-20 mi N	0-1980	0.18	5	0.15
Rancho Seco	C-CA	2,480	Sacramento-26 mi NW	93-1970	0.40	4.7	0.25
Arkansas Nuclear 1	NW-AR	1,100	Little Rock-57 mi SE	678-1967	0.65	4	0.20
Cook 1	SW-MI	650	South Bend-25 mi SE	1,086-1980	0.38	2	0.20
Cook 2							
Calvert Cliffs 1	SE-MD	1,135	Wash. DC-45 mi NW	1,465-1965	0.67		0.15
Calvert Cliffs 2							
Bell	C-NY	900	Syracuse-40 mi NE	432-1960	0.53	5.5	0.10
Three Mile Island 2	SE-PA	625	Harrisburg-10 mi NW	2,700-1969	0.38	2	0.12
Hatch 1	SE-GA	2,100	Savannah-65 mi E	107-1972	0.81		0.15
Shoreham	SE-NY	450	New Haven-22 mi N	3,300-1960	0.17	5	0.15
Diablo Canyon 2	SW-CA	750	Santa Barbara-100 mi SE	4-1970	0.56	6	0.20
Brunswick 2	SE-NC	1,200	Wilmington-20 mi N	621-1966	0.57	2	0.16
Brunswick 1							
Sequoyah 1	SE-TN	525	Chattanooga-12 mi SW	1,440-1980	0.36	7	0.14
Sequoyah 2							
Midland 1	C-MI	370	Saginaw-18 mi SE	4,577-1968	0.28	1	0.10
Midland 2							
Duane Arnold	EC-IA	480	Cedar Rapids-10 mi SE	275-1970	0.19	6	0.12
Fitzpatrick	NC-NY		Syracuse-3 mi SSE	297-1960	0.57		0.15
Beaver Valley 1	WC-PA	420	Pittsburgh-25 mi ESE	6,346-1970	0.23	3.6	0.12
St. Lucie 1	SE-FL	1,132	W. Palm Beach-45 mi SSE	140-1978	0.97	5	0.05
Millstone 2	SE-CT	500	Hartford-38 mi NW	4,776-1970	0.40	3	0.17
North Anna 1	EC-VA	1,075	Richmond-40 mi SSE	225-2000	0.83	1.3	0.15
North Anna 2							

Table 3.<sup>d</sup> (p. 3)

Name	Location	Site size (acres)	Nearest metropolis, dist.-dir.	Population within 2 miles	Exclusion distance (miles)	LPZ (miles)	SSE (g)
Sanbrook	SE-MI	650	Laurence-25 mi SW	2,828-1968	0.57	1.5	0.17
Fermi 2	SE-MI	925	Detroit-27 mi NNE	4,967-1980	0.41	0.5	0.10
Indian Point 4	SE-WY	130	New York-25 mi S	21,700-1975	0.20	0.5	0.15
Indian Point 5							
Trojan	NW-OR	623	Portland-31 mi SSE	541-1960	0.41	2.5	0.25
Davis-Besse 1	NW-OH	954	Toledo-20 mi W	460-1980	0.45	2	0.15
Farley 1	SE-AL	800	Albany, Ga.-60 mi ENE	486-1975	0.78	2	0.10
Limerick 1	SE-PA	587	Reading-20 mi WNW	5,258-1968	0.47		0.12
Limerick 2							
Hope Creek 1	SW-NJ	700	Wilmington-20 mi W	0-1980	0.50	5	0.20
Hope Creek 2							
Zimmer 1	SW-OH	491	Cincinnati-25 mi NW	1,496-1970	0.13	4	0.10
Zimmer 2							
San Onofre 2	S-CA	84	San Diego-50 mi SE	500-1980	0.10	2	0.50
San Onofre 3							
Forked River 1	EC-NJ	1,425	Atlantic City-35 mi SSW	2,514-1970	0.38	2	0.22
Farley 2	SE-AL	870	Albany, Ga.-60 mi ENE	486-1975	0.78	2	0.10
Hatch 2	SE-GA	2,100	Savannah-65 mi E	107-1972	0.91		0.15
Bailly	NW-IN	350	Cory-10 mi W	995-1970	0.13	1.5	0.15
Arkansas 2	NW-AR	1,100	Little Rock-57 mi SE	678-1970	0.65	4	0.20
McGuire 1	C-WC	30,000	Charlotte-17 mi SSE	342-1970	0.47	5.5	0.12
McGuire 2							
La Salle 1	NE-IL	5,000	Chicago-60 mi ENE	120-1975	0.34	3.7	0.15
La Salle 2							
North Coast	Puerto Rico		Arecibo-6 mi W				0.20
Waterford 3	SC-LA	3,600	New Orleans-22 mi E	1,685-1970	0.57	2	0.10
Waterford 4							
Susquehanna 1	EC-PA	1,522	Wilkes-Barre-16 mi NE	1,126-1970	0.28	3	0.10
Susquehanna 2							
St. Lucie 2	SE-FL	1,132	W. Palm Beach-45 mi SSE	140-1978	0.97	5	0.05
Watts Bar 1	SE-TN	1,770	Chattanooga-45 mi SW	210-1970	0.50	3	0.18
Watts Bar 2							
Summer 1	SW-SC	11,000	Columbia-26 mi SE	144-1970	1.00	3	0.12
WPPSS-2 (Hanford 2)	SE-WA	NA	Spokane-125 mi NE	0-1970	0.57	9	0.25
Hanford 1	NW-CA	409	San Francisco-130 mi SE	573-1970	0.70		0.50
Hanford 2							



Table 3.2 (p. 4)

Name	Location	Site size (acres)	Nearest metropolis, dist.-dir.	Population within 2 miles	Exclusion distance (miles)	LP2 (miles)	SSE (g)
Harris 1							
Harris 2	NC-NC	18,000	Raleigh-20 mi NE	119-1970	1.32	3	0.12
Harris 3							
Harris 4							
North Anna 3	EC-VA	1,075	Richmond-40 mi SSE	225-2000	0.95	6	0.12
North Anna 4							
LaCrosse+	SU-WI		LaCrosse-20 mi N		0.21	3	
Nine Mile Point 2	NC-NY	900	Syracuse-35 mi SSE	279-1970	1.00	4	0.10
Beaver Valley 2	WC-PA	449	Pittsburgh-25 mi ESE	6,346-1970	0.28	3.6	0.10
Catawba 1	NC-SC	23,600	Charlotte-20 mi NE	495-1970	0.47	3.8	0.15
Catawba 2							
Grand Gulf 1	WC-MS	2,200	Jackson-55 mi ENE	190-1970	0.48	2	0.15
Grand Gulf 2							
Hillstone 3	SE-CT	500	Hartford-38 mi NW	4,776-1970	0.34	2.4	0.17
Vogtle 1							
Vogtle 2	EC-GA	3,177	Columbia-75 mi NE	15-1977	0.68	2	
Vogtle 3							
Vogtle 4							
Surry 3	SE-VA	840	Newport News-17 mi ESE	7-1970	0.31	3	0.15
Surry 4							
Bellefonte 1	NE-AL	1,500	Huntsville-38 mi W	115-1970	0.57	2	0.18
Bellefonte 2							
Perry 1	NW-OH	1,065	Cleveland-33 mi SW	1,190-1970	0.57	5	0.15
Perry 2							
Seabrook 1	SE-NH	715	Lawrence-25 mi SW	3,183-1970	0.61	1.5	0.20
Seabrook 2							
Comanche Peak 1	NE-TX	5,000	Ft. Worth-42 mi NNE	41-1970	0.88	4	0.12
Comanche Peak 2							
Douglas Point 1	SC-MD	1,440	Wash. DC-35 mi NNE	159-1970	0.57	3	0.07
Douglas Point 2							
Summit 1	N-DE	1,800	Wilmington-17 mi NNE	1,925-1970	0.28	2	0.15
Summit 2							
Greenwood 2	SE-WI	3,620	Detroit-55 mi SSW	270-1970	0.88	0.9	0.06
Greenwood 3							
Byron 1	NC-IL	1,430	Rockford-17 mi NE		0.28	3	0.12
Byron 2							
Braidwood 1	NE-IL	4,320	Chicago-65 mi NE	1,879-1970	0.30	1.1	0.12
Braidwood 2							

Table 1.<sup>a</sup> (p. 5)

Name	Location	Site size (acres)	Nearest metropolis, dist.-dir.	Population within 2 miles	Exclusion distance (miles)	LPZ (miles)	SSE (g)
River Bend 1	SE-LA	2,480	Baton Rouge-24 mi SSE	404-1970	0.38	2	0.10
River Bend 2							
WPPSS 1	SE-WA	972	Spokane-125 mi NE	0-1980	1.20	4	0.25
Clinton 1	W-IL	15,000	Decatur-20 mi SSW	141-1972	0.60	2.5	0.15
Clinton 2							
Fulton 1	SE-PA	360	Lancaster-18 mi N	1,286-1980	0.48	1.5	0.12
Fulton 2							
Allens Creek 1	SE-TX	11,000	Houston-40 mi E	72-1970	0.90	3.5	0.10
Allens Creek 2							
Pilgrim 2	SE-MA	517	Brockton-22 mi NW	1,524-1972	0.27	4	0.15
Pilgrim 3							
Quemassaw 1	EC-WI	1,065	Saginaw-19 mi SW	504-1970	0.50	1.8	0.12
Quemassaw 2							
Atlantic Floating 1	SE-NJ	186	Atlantic City-11 mi SW	0-1980	1	2	0.30
Atlantic Floating 2							
Wolf Creek	EC-KS	1,100	Topeka-55 mi N	38-1970	0.70	2.5	0.20
Callaway 1	EC-MD	3,177	Columbia-35 mi WNW	87-1970	0.75	2.5	0.20
Tyrone 1	WC-WI	4,700	Minn.-St. Paul-65 mi WNW	99-1970	0.86		0.20
Sterling 1	NC-NY	2,800	Syracuse-35 mi SE	197-1970	0.70	2.5	0.20
Callaway 2	EC-MD	3,177	Columbia-35 mi WNW	87-1970	0.75	2.5	0.20
Tyrone 2	WC-WI	4,700	Minn.-St. Paul-65 mi WNW	99-1970	0.86		0.20
Perkins 1							
Perkins 2	NC-NC		Winston-Salem-20 mi NNE	544-1970	0.47	5	0.15
Perkins 3							
Cherokee 1							
Cherokee 2	NW-SC		Charlotte-38 mi FNE	566-1970	0.47	5	0.15
Cherokee 3							
Montague 1	WC-MA	1,900	Holyoke-30 mi S	2,590-1970	0.48	2.5	0.20
Montague 2							
South Texas 1	SE-TX	12,250	Houston-90 mi NE	9-1970	1	3	0.10
South Texas 2							
Davis-Besse 2	NW-OH	954	Toledo-20 mi W	460-1980	0.4	2	0.15
Davis-Besse 3							
Koshkonong 1 (Haven)	EC-WI	625	Sheboygan-5 mi S <sup>1</sup>	378-1980	0.6	3	0.20
Koshkonong 2 (Haven)							
WPPSS 3	WC-WA	2,450	Tacoma-50 mi ENE	83-1980	0.8	3	0.32
WPPSS 5							

Table 3.1 (continued)

Site	Location	Site size	Nearest metropolis, miles	Population within 2 miles	Exclusion distance (miles)	LPZ (miles)	SSE (g)
Blue Hills 1	EC-TX	3,016	Geaumont-75 mi SSW	5-1970	0.82	3	0.13
Blue Hills 2							
WPPSS 4	SE-WA	972	Spokane-125 mi NE	0-1980	1.20	4	0.25
Pebble Springs 1	NC-OK	2,000	Portland-120 mi W	9-1970	0.50	2	0.15
Pebble Springs 2							
Jamesport 1	SE-NY	525	New Haven-25 mi NW	632-1970	0.42	2	0.20
Jamesport 2							
Hartsville 1							
Hartsville 2	NC-TN	1,940	Nashville-40 mi WSW	260-1970	0.63	3	0.18
Hartsville 3							
Hartsville 4							
Skagit 1	NW-WA	1,500	Seattle-45 mi S	306-1970	0.35	4	0.25
Skagit 2							
Barton 1							
Barton 2	C-AL	2,800	Montgomery-27 mi SSE	89-1970	0.50	2	0.13
Barton 3							
Barton 4							
Palo Verde 1							
Palo Verde 2	SW-AZ	3,800	Phoenix-45 mi E	2-1970	0.57	3.5	0.20
Palo Verde 3							
Glinch River	EC-TN	1,354	Knoxville-25 mi ENE	335-1970	0.42	5	0.18
San Joaquin	S-CA		Bakersfield-33 mi NE				
Marble Hill 1	SE-IN	987	Louisville-30 mi SE	288-1974	0.42	2	0.12
Marble Hill 2							
Ft. Calhoun 2	EC-NE	1,159	Omaha-19 mi SSE	161-1970	0.65	3	0.20
Greene County	EC-NY	282	Albany-35 mi ENE	1,378-1970	0.46	2.5	0.20
Phipps Bend 1	NE-TN	1,270	Knoxville-72 mi WSW	585-1970	0.47	3	0.20
Phipps Bend 2							
Black Fox 1	NE-OK	2,206	Tulsa-20 mi W	92-1970	0.50	2.5	0.12
Black Fox 2							
Yellow Creek 1	NE-MS	1,160	Huntsville-93 mi ESE	245-1970	0.42	3	0.30
Yellow Creek 2							
NEP 1	SW-RI	549	Providence-30 mi NNE	1,182-1975	0.40	1.5	0.25
NEP 2							
Erie 1	NC-OH	1,740	Lorain-12 mi ENE	1,512-1980	0.50	2.0	0.20
Erie 2							
Sundesert 1	SE-CA	7,040	Riverside-155 mi W	0-1985	0.61	3.3	0.35
Sundesert 2							

Table 3.<sup>a</sup> (p. 7)<sup>a</sup> Abbreviations used:

LPZ - low-population zone.

SSE = safe-shutdown-earthquake design value in amount of acceleration.

Standard abbreviations are used to indicate the area of a state where the plant is located [N(north), S(south), E(east), W(west), and C(central)]. Official U.S. Post Office Department abbreviations are used for the states:

Alaska	AK	Kansas	KS	North Carolina	NC
Alabama	AL	Kentucky	KY	North Dakota	ND
Arizona	AZ	Louisiana	LA	Ohio	OH
Arkansas	AR	Maine	ME	Oklahoma	OK
California	CA	Maryland	MD	Oregon	OR
Canal Zone	CZ	Massachusetts	MA	Pennsylvania	PA
Colorado	CO	Michigan	MI	Rhode Island	RI
Connecticut	CT	Minnesota	MN	South Carolina	SC
Delaware	DE	Mississippi	MS	South Dakota	SD
District of Columbia	DC	Missouri	MO	Tennessee	TN
Florida	FL	Montana	MT	Texas	TX
Georgia	GA	Nebraska	NE	Utah	UT
Hawaii	HI	Nevada	NV	Vermont	VT
Idaho	ID	New Hampshire	NH	Virginia	VA
Illinois	IL	New Jersey	NJ	Washington	WA
Indiana	IN	New Mexico	NM	West Virginia	WV
Iowa	IA	New York	NY	Wisconsin	WI
				Wyoming	WY

<sup>b</sup> The Koshkonong plant is now located in Sheboygan County in east central Wisconsin on Lake Michigan. The new plant name is Haven.

Table 4. Circulating-Water System Data<sup>a</sup>

Name	Type of cooling	Nearby water makeup	Condenser flow (gpm)	Temp. rise <sup>b</sup> (°F)	gpm <sup>c</sup>		Cooling towers
					MI(e)	°F	
Indian Point 1	Once through	Hudson R.	280,000	12.6	83.8		
Dresden 1	Once through	Kankakee R.	171,200				
Yankee-Rove	Once through	Deerfield R.	140,000	24	33.3		
Bamboldt Bay	Once through	Pacific O.	49,600	20	38.2		
Big Rock Point	Once through	L. Mich.	49,000	20	34.0		
Peach Bottom 1	Once through	Susque. R.	50,000	12	104.2		
San Onofre 1	Once through	Pacific O.	350,000	18	43.2		
Conn. Yankee	Once through	Conn. R.	372,000	22.4	28.9		
Oyster Creek 1	Once through	Barnegat B.	460,000	14	50.5		
Nine Mile Point 1	Once through	L. Ontario	250,000	32	12.8		
Dresden 2	Spray canal & cooling lake	Kankakee R.	473,000	23	25.4		
Cinna 1	Once through	L. Ontario	356,000	19.6	37.1		
Millstone 1	Once through	Long Is. S.	420,000	21	29.0		
Indian Point 2	Once through	Hudson R.	840,000	16.6	58.0		
Dresden 3	Spray canal & cooling lake	Kankakee R.	473,000	23	25.4		
Turkey Point 3	Cooling canal	Biscayne B.	624,000	16	52.3		
Turkey Point 4							
Quad-Cities 1	Spray canal	Miss. R.	471,000	24	24.3		
Palisades	Towers	L. Mich.	390,000	24	18.3		2 mech. draft
Browns Ferry 1	Variable	Tenn. R.	550,000	26	19.9		6 mech. draft for 3 units
Browns Ferry 2			Towers				
Robinson 2	Cooling lake	Robinson Res.	482,100	18	38.3		
Monticello	Variable	Miss. R.	280,000	27	19.0		2 mech. draft
Quad-Cities 2	Spray canal	Miss. R.	471,000	24	24.3		
Point Beach 1	Once through	L. Mich.	350,000	19.3	36.5		
Fort St. Vrain	Towers	S. Platte R.	156,000	21.5	22.0		1 mech. draft
Oconee 1	Once through	Keowee L.	680,000	17.2	44.6		
Oconee 2							
Vermont Yankee	Variable	Conn. R.	366,000	20	35.5		2 mech. draft
Salem 1	Once through	Del. R.	1,100,000	13.6	74.2		
Diablo Canyon 1	Once through	Pacific O.	863,000	18	44.2		
Peach Bottom 2	Once through	Susque. R.	750,000	20.8	33.9		3 mech. draft for both units
Peach Bottom 3	+ towers <sup>d</sup>						
Surry 1	Once through	James R.	840,000	14	73.0		
Surry 2							
Prairie Island 1	Variable	Miss. R.	308,000	27	21.5		2 mech. draft
Fort Calhoun 1	Once through	Missouri R.	365,000	18	44.3		
Indian Point 3	Once through	Hudson R.	840,000	16.6	52.4		

Table 4.<sup>2</sup> (p. 2)

Name	Type of cooling	Nearby water makeup	Condenser flow (gpm)	Temp. rise <sup>b</sup> (°F)	$\frac{\text{gpm}^2}{\text{MW(e) } ^\circ\text{F}}$	Cooling towers
Oconee 3	Once through	Keowee L.	680,000	17.2	44.6	2 hyperbolic
Three Mile Island 1	Towers	Susque. R.	430,000	28	19.4	
Pilgrim 1	Once through	Cape Cod B.	311,000	29	15.6	
Zion 1	Once through	L. Michigan	735,000	20	35.0	
Browns Ferry 3	Variable	Tenn. R.				
Cooper Station	Once through	Missouri R.	631,000	18	45.1	6 mech. draft for 3 units
Point Beach 2	Once through	L. Michigan	350,000	19.3	36.5	
Crystal River 3	Once through	G. Mexico	600,000	18	39.0	
Crystal River 4						
Zion 2	Once through	L. Michigan	735,000	20	35.0	
Keweenaw	Once through	L. Michigan	420,000	19	39.5	2 mech. draft
Prairie Island 2	Variable	Miss. R.	308,000	27	21.5	
Maine Yankee	Once through	Back R. to Atlantic O.	426,000	25.6	21.1	
Salem 2	Once through	Delaware R.	1,100,000	13.6	72.5	
Rancho Seco	Towers	Folsom Canal	446,000	28	17.4	
Arkansas Nuclear 1	Once through	Dard Res.	765,000	15	60	2 hyperbolic
Cook 1	Once through	L. Michigan	800,000	21	34.9	
Cook 2						
Calvert Cliffs 1	Once through	Ches. B.	1,200,000	10	142.0	
Calvert Cliffs 2						
Bell	Once through	L. Cayuga	550,000	20	31.8	2 hyperbolic
Three Mile Island 2	Towers	Susque. R.	444,000	28	20.0	
Hatch 1	Towers	Altamaha R.	555,000	20	35.3	
Shoreham	Once through	Long Is. S.	600,000	19.5	37.6	
Diablo Canyon 2	Once through	Pacific O.	863,000	18	43.3	
Brunswick 2						Towers after 3 years operation
Brunswick 1	Once through	Cape Fear R. Atlantic O.	675,000	17	48.4	
Sequoyah 1	Variable	Chick. L.	535,000	29	16.1	
Sequoyah 2						
Midland 1	Once through	Cooling lake				
Midland 2						2 mech. draft
Duane Arnold	Towers	Ced. Rap. R.	290,000	25	21.6	
Fitzpatrick	Once through	L. Ontario	353,000	32	13.4	
Beaver Valley 1	Variable	Ohio R.	480,000	26	21.7	
St. Lucie 1	Once through	Atlantic O.	530,000	21	31.2	
Millstone 2	Once through <sup>c</sup>	Long Is. S.	540,000	22.5	29.0	1 hyperbolic
North Anna 1	Once through	Cooling lake	900,000	14	71.6	
North Anna 2						

Table 4.2 (p. 3)

Name	Type of cooling	Nearby water makeup	Condenser flow (gpm)	Temp. rise (°F)	$\frac{\text{gpm}}{\text{MW(e)} \cdot \text{°F}}$	Cooling towers
Seabrook	Once through	Atlantic O.	420,000	30	15.2	
Fermi 2	Towers & pond	L. Erie	900,000	18	45.7	2 hyperbolic
Indian Point 4	Once through <sup>c</sup>	Hudson R.	858,000	16.8	45.8	
Indian Point 5						
Trojan	Tower	Columbia R.	350,000	45	6.9	1 hyperbolic
Davis-Besse 1	Tower	L. Erie	480,000	26	20.4	1 hyperbolic
Farley 1	Towers	Woodruff Res.	635,000	20	38.3	3 mech. draft
Limerick 1	Tower	Schuykill R.	450,000	30	14.1	1 hyperbolic each unit
Limerick 2						
Hope Creek 1	Towers	Delaware R.	552,000	28	18.5	1 hyperbolic each unit
Hope Creek 2						
Zimmer 1	Towers	Ohio R.	450,000	20	27.8	1 hyperbolic each unit
Zimmer 2						
San Onofre 2	Once through	Pacific O.	800,000	20	36.4	
San Onofre 3						
Forked River 1	Tower	Barnegat B.	570,000	28	19.0	1 hyperbolic
Farley 2	Towers	Woodruff Res.	635,000	20	38.3	3 mech. draft
Hatch 2	Towers	Altamaha R.	555,000	20	34.9	3 mech. draft
Bailly 1	Tower	L. Michigan	607,100	14	67.2	1 hyperbolic
Arkansas 2	Tower	Dard. Res.	422,000	30.7	14.7	1 hyperbolic
McGuire 1	Once through	L. Norman	675,000	22.1	25.9	
McGuire 2						
La Salle 1	Cooling lake	Illinois R.	645,000	24	24.9	
La Salle 2						
North Coast	Once through	Atlantic O.				
Waterford 3	Once through	Miss. R.	975,000	16	54.8	
Waterford 4						
Susquehanna 1	Towers	Susque. R.	450,000	35	12.2	1 hyperbolic each unit
Susquehanna 2						
St. Lucie 2	Once through	Atlantic O.	530,000	21	31.2	
Watts Bar 1	Towers	Chick. L.	410,000	18	9.2	1 hyperbolic each unit
Watts Bar 2						
Summer 1	Once through	L. Mont.	485,000	25	21.6	
WPPSS-2(Hanford 2)	Towers	Columbia R.	550,000	28.7	19.5	2 mech. draft
Mendocino 1	Once through	Pacific O.	864,000	18	41.1	
Mendocino 2						

Table 4.2 (p. 4)

Name	Type of cooling	Nearby water makeup	Condenser flow (gpm)	Temp. rise <sup>c</sup> (°F)	gpm <sup>c</sup> MW(e) * F	Cooling towers
Harris 1						
Harris 2	Towers	Res. and Lake Fear R.	423,750	28	19.2	1 hyperbolic each unit
Harris 3						
Harris 4						
North Anna 3						
North Anna 4	Once through	N. Anna Res.	912,000	14	71.8	
Lacrosse	Once through	Miss. R.	64,000	15	85	
Nine Mile Point 2	Once through	L. Ontario	500,000	32	14.2	
Beaver Valley 2	Tower	Ohio R.	480,400	26	21.7	1 hyperbolic each unit
Catawba 1	Towers	L. Wylie	660,000	24	24.0	4 mech. draft each unit
Catawba 2						
Grand Gulf 1	Towers	Miss. R.	548,000	31	14.1	1 hyperbolic each unit
Grand Gulf 2						
Millstone 3	Once through	Long Is. S.	900,000	18	43.3	
Vogtle 1	Towers	Savan. R.	460,800	34.4	12.0	1 hyperbolic each unit
Vogtle 2						
Vogtle 3						
Vogtle 4						
Surry 3	Spray canal	James R.	1,033,000	24.4	49.3	
Surry 4						
Bellefonte 1	Towers	Cunt. Res. Tenn. R.	466,000	36	10.7	1 hyperbolic each unit
Bellefonte 2						
Perry 1	Towers	L. Erie	549,000	32	14.2	1 hyperbolic each unit
Perry 2						
Seabrook 1	Once through	Atlantic O.	347,000	44	6.6	
Seabrook 2						
Comanche Peak 1	Once through	Squaw Creek Res.	1,100,000	15	63.8	
Comanche Peak 2						
Douglas Point 1	Towers	Potomac R.	619,000	25.9	20.3	1 hyperbolic each unit
Douglas Point 2						
Summit 1	Towers	Ches. & Del. Canal	330,000	26	16.6	2 mech. draft each unit
Summit 2						
Greenwood 2	Spray canal	L. Huron	520,000	30	14.4	
Greenwood 3						
Byron 1	Towers	Rock R.	632,000	24	23.5	2 hyperbolic each unit
Byron 2						
Braidwood 1	Cooling lake	Kankakee R.	731,000	20	32.6	
Braidwood 2						



Table 4. (p. 5)

Name	Type of cooling	Nearby water makeup	Condenser flow (gpm)	Temp. rise <sup>a</sup> (°F)	gpm		Cooling towers
					MI(e)	°F	
River Bend 1	Towers	Miss. R.	508,500	27	20.2		3 mech. draft each unit
River Bend 2							
WPPSS 1	Towers	Columbia R.	593,000	28			2 mech. draft
Clinton 1							
Clinton 2	Once through	Salt Cr. Res.	565,800	23	26.4		
Fulton 1	Towers		463,000	24	14.3		1 hyperbolic each unit
Fulton 2							
Allens Creek 1	Cooling lake	Brazos R.	810,000	19.5	36.1		
Allens Creek 2							
Pilgrim 2	Once through	Cape Cod B.	765,000	20	32.4		
Pilgrim 3							
Quanicassee 1	Towers	Haddock Canal	458,000	33	11.6		1 hyperbolic each unit
Quanicassee 2							
Atlantic Floating 1	Once through	Atlantic O.	900,000	17.2	45.5		
Atlantic Floating 2							
Wolf Creek	Cooling lake	Wolf Cr.	551,250	30.4	15.8		
Callaway 1	Tower	Missouri R.	550,000	30	16.4		1 hyperbolic
Tyrone 1	Tower	Chippewa R.	550,000	30.4	15.8		3 mech. draft
Sterling 1	Once through	L. Ontario	834,000	20	36.3		
Callaway 2	Tower	Missouri R.	550,000	30	16.4		1 hyperbolic
Tyrone 2	Tower	Chippewa R.	550,000	30.4	15.8		3 mech. draft
Perkins 1	Towers	Yadkin R.	758,000	24	24.8		4 mech. draft each unit
Perkins 2							
Perkins 3							
Cherokee 1	Towers	Broad R.	758,000	24	24.8		4 mech. draft each unit
Cherokee 2							
Cherokee 3							
Montague 1	Towers	Conn. R.	600,000	28	18.6		1 hyperbolic each unit
Montague 2							
South Texas 1	Cooling lake	Colo. R.	557,400	19	38.2		
South Texas 2							
Davis-Besse 2	Towers	L. Erie	480,000	26	20.4		1 hyperbolic each unit
Davis-Besse 3							
Koshkonong 1 (Haven)	Towers	L. Michigan	450,000	30	16.7		1 hyperbolic each unit
Koshkonong 2 (Haven)							
WPPSS 3	Towers	Chehalis R. Ranney Wells	530,000	31.3	13.6		1 hyperbolic each unit
WPPSS 5							

Table 4. (p. 6)

Name	Type of cooling	Nearby water makeup	Condenser flow (gpm)	Temp. rise <sup>b</sup> (°F)	gpm <sup>a</sup> — MW(e) °F	Cooling towers
Blue Hills 1	Towers	Toledo Pond Res.	506,000	28.5	19.2	3 mech. draft each unit
Blue Hills 2						
WPPSS 4	Towers	Columbia R.	593,000	28		2 mech. draft
Pebble Springs 1	Cooling lake	Columbia R.	780,000	20	31.0	
Pebble Springs 2						
Jamesport 1	Once through	Long Is. S.	906,700	18	43.8	
Jamesport 2						
Hartsville 1						
Hartsville 2	Towers	Old Hickory Res.	450,000	36	9.8	1 hyperbolic each unit
Hartsville 3						
Hartsville 4						
Skagit 1	Towers	Skagit R. Ranney Wells	440,000	39	8.8	1 hyperbolic each unit
Skagit 2						
Barton 1						
Barton 2	Towers	Coosa R.	583,100	29	17.3	1 hyperbolic each unit
Barton 3						
Barton 4						
Palo Verde 1						
Palo Verde 2	Towers	Phoenix sewage	587,000	30	15.8	3 mech. draft each unit
Palo Verde 3						
Clinch River	Tower	Clinch R.	185,200	25	21.2	1 mech. draft
San Joaquin						
Marble Hill 1	Towers	Ohio R.	507,000	28	16.0	4 mech. draft each unit
Marble Hill 2						
Ft. Calhoun 2	Once through	Missouri R.	890,000	20	39.2	
Greene County	Towers	Hudson R.	527,128	32	13.9	1 hyperbolic
Phipps Bend 1	Towers	Holston R.	480,000	33	11.8	1 hyperbolic each unit
Phipps Bend 2						
Black Fox 1	Towers	Verdigris R.	622,000	25.4	21.3	3 mech. draft each unit
Black Fox 2						
Yellow Creek 1	Towers	Pickwick Res. Tenn. R.	490,200	34	11.2	2 mech. draft each unit
Yellow Creek 2						
NEP 1	Once through	Atlantic O.	406,000	37	9.5	
NEP 2						
Erie 1	Tower	L. Erie	556,000	29.3	15.06	1 hyperbolic each unit
Erie 2						
Sanderson 1	Towers	Palo Verde Dr. & Colo. R.	475,000	28.0	17.67	4 mech. draft each unit
Sanderson 2						

Table 4.<sup>2</sup> (p. 7)<sup>2</sup> Abbreviations used:

Ced. Rap. - Cedar Rapids	B. - Bay
Ches. - Chesapeake	Cr. - Creek
Chick. - Chickamauga	Dr. - Drain
Colo. - Colorado	G. - Gulf
Conn. - Connecticut	L. - Lake
Dard. - Dardanelle	Res. - Reservoir
Del. - Delaware	R. - River
Gunt. - Gunterville	O. - Ocean
Long Is. - Long Island	S. - Sound
mech. - mechanical	
Miss. - Mississippi	
Mont. - Monticello	
Savan. - Savannah	
Susque. - Susquehanna	
Tenn. - Tennessee	

<sup>0</sup> Temperature rise across the main condenser.<sup>2</sup> gpm

\_\_\_\_\_ - an index number based on circulating-water system performance.

MM(e) °F

<sup>d</sup> Once through + towers to partly cool before discharge.<sup>e</sup> Discharge through quarry.

## 2. DISCUSSION OF DATA

The data in the preceding four tables were reviewed to see if trends could be discerned. Some of the analyses yielded nothing, while in others some interesting trends showed up. As the data were reviewed, an effort was made to select maximum and minimum values which were evident. In all these analyses all plants that have applied for a construction license are reviewed, even though some of these are now deferred or cancelled. The rationale for this is that it is assumed that eventually the plants will be built. This assumption does not cover cases like Newbold Island, Bell, or Aguirre, for which plant applications no longer exist.

The analyses presented here relate to plant electrical generating capacity and time of startup, populations surrounding the plants, size of the plant sites, fuel performance, circulating-water systems, safe-shutdown-earthquake design values, and generating capacity concentrations.

### 2.1 General Data

#### 2.1.1 Plant capacity and startup

The year of plant startup or the estimated date of startup was plotted against the plant capacity in MW(e). In Fig. 1, where this data is plotted, a small dot refers to one reactor generating unit. In most cases, a two-unit plant would have startup dates 1 or 2 years apart and consequently two data points. Where two plants of equal size have startup dates in the same year, a larger dot is used for the data point to represent two reactor generating units. See Table 1 for the data.

In Fig. 1, the upper and lower dotted lines represent maximum and minimum generating capacities. This figure shows the trends in increased plant size and also the concentration of plant startups, which will be heaviest from 1981 to 1984.

The larger plants are now running over 1250 MW(e) per reactor generating unit. In seven cases, more than two units have been proposed, namely:

Harris - 4 units at 900 MW(e) each, total 3600 MW(e)

Vogtle - 4 units at 1113 MW(e) each, total 4452 MW(e)

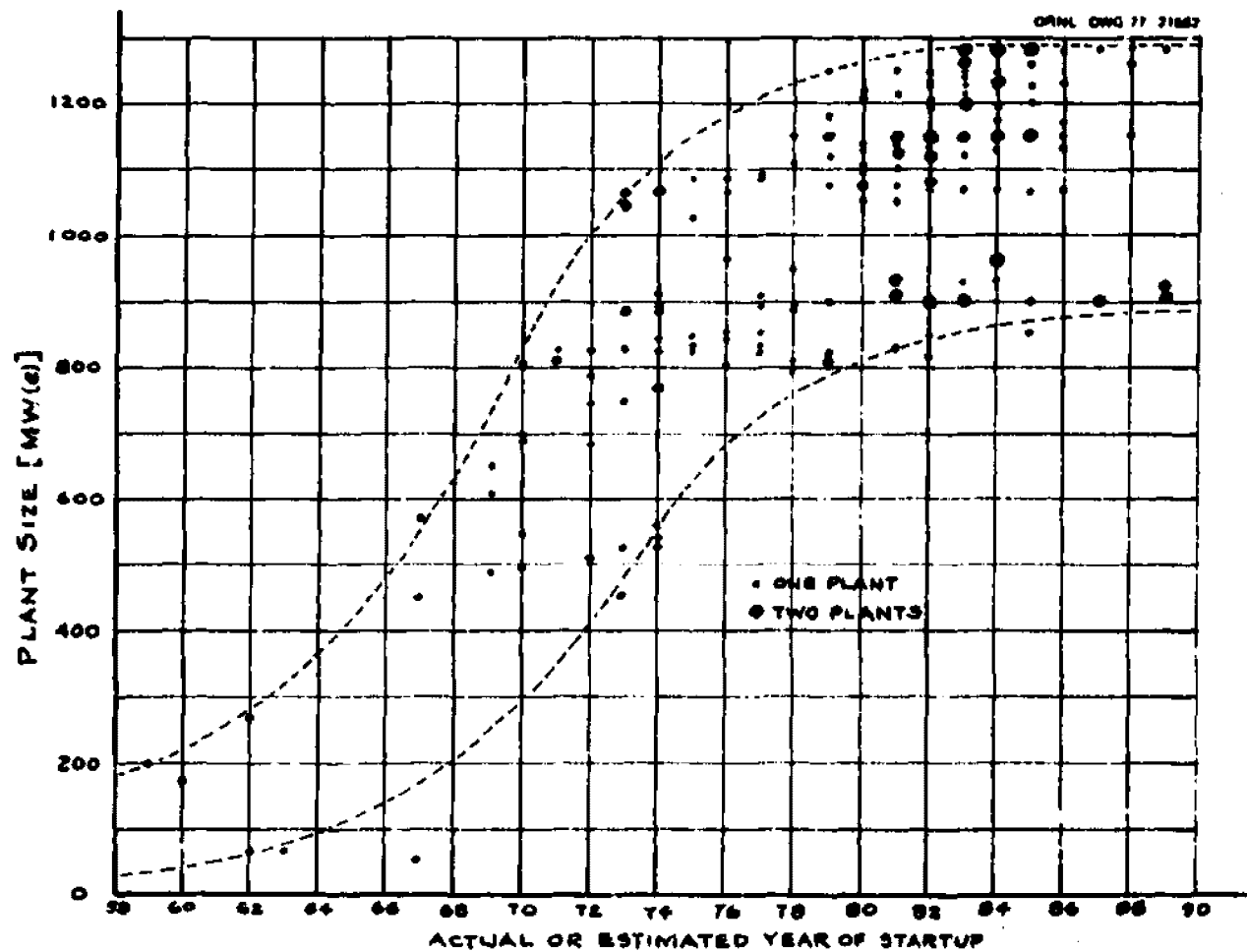


Fig. 1. Nuclear plant generating capacity vs year of startup.

Perkins - 3 units at 1280 MW(e) each, total 3840 MW(e)  
 Cherokee - 3 units at 1280 MW(e) each, total 3840 MW(e)  
 Hartsville - 4 units at 1280 MW(e) each, total 5120 MW(e)  
 Barton - 4 units at 1159 MW(e) each, total 4636 MW(e)  
 Palo Verde - 3 units at 1237 MW(e) each, total 3711 MW(e)

Seventeen plants have been proposed with reactor units exceeding 1200 MW(e) capacity.

### 2.1.2 Multiple units (nuclear energy centers)

Many studies have been made to investigate the siting of up to 20 1000-MW(e) plants at one location. A feasibility study by Cope and Bauman, *Expansion Potential for Existing Nuclear Power Station Sites*,<sup>1</sup> looked into capacity possibilities for the sites reviewed in this report and found that 44 sites could be expanded to accommodate 9 to 16 nuclear plants [ $>10$  GW(e)], and 10 sites could be expanded to handle more than 16 units [ $>20$  GW(e)]. These 10 sites and their limiting factors are shown below.

<u>Plant Name</u>	<u>Limiting Factors</u>
Browns Ferry	Population and demand
Bellefonte	Population and demand
Vogtle	Demand
River Bend	Demand
Yellow Creek	Demand
Oyster Creek-Forked River	Population and environment
Pebble Springs	Demand
Sequoyah	Population and public acceptance
Hanford	Demand
Watts Bar	Demand

### 2.1.3 Reactor vendors and architect-engineers

There are four principal suppliers of the nuclear steam supply system (NSSS): Combustion Engineering, Inc., Westinghouse Electric Corp., and Babcock and Wilcox Company for the pressurized-water system and

General Electric Company for the boiling-water system. General Atomic Company built Peach Bottom 1 and Fort St. Vrain and designed two gas-cooled reactors which were never built (Summit and Fulton). Allis Chalmers Corp. was the NSSS supplier for LaCrosse.

Many A-E firms have participated in balance-of-plant design and/or construction. The firms and the number of times they have been involved in nuclear plant design are:

Brown & Root, Inc. (2)	Pioneer Service and Engineering Company (3)
Burns & Roe, Inc. (6)	Sargent & Lundy Engineers (22)
Black & Veatch (2)	Stone & Webster Engineering Corp. (28)
Bechtel Corp. (67)	Southern Services, Inc. (8)
Ebasco Services, Inc. (18)	United Engineers & Constructors (14)
Gibbs and Hill, Inc. (5)	
Gilbert Associates, Inc. (9)	

## 2.2 Reactor Data

### 2.2.1 Fuel performance

The average heat flux and maximum thermal output per foot of fuel pin (from Table 2) have been plotted in Figs. 2 and 3. These data are plotted as a function of docket number, which provides a relative time scale.

The most significant observation about the curves is the reduction in values that occur near docket numbers 50-380 and 50-390 in Fig. 3 (maximum thermal output) and near docket number 50-425 in Fig. 2 (average heat flux). This reducing trend starts with docket number 50-387 and ends with 50-450 and 50-475 for the PWR plants and 50-414 for the BWR plants. The dates of application for these docket numbers are: 50-387 - March 1971; 50-460 - July 1973; 50-475 - October 1973; 50-414 - September 1971. This period of time in the evolution of the design of the light-water reactor corresponds to the period of especial concern in the Nuclear Regulatory Commission [then a part of the Atomic Energy Commission (AEC)] with the adequacy and design of the emergency core-cooling system (ECCS) for light-water reactors (LWRs). In June 1971, the AEC first issued interim criteria for ECCS designs<sup>2</sup> which had the effect of limiting the

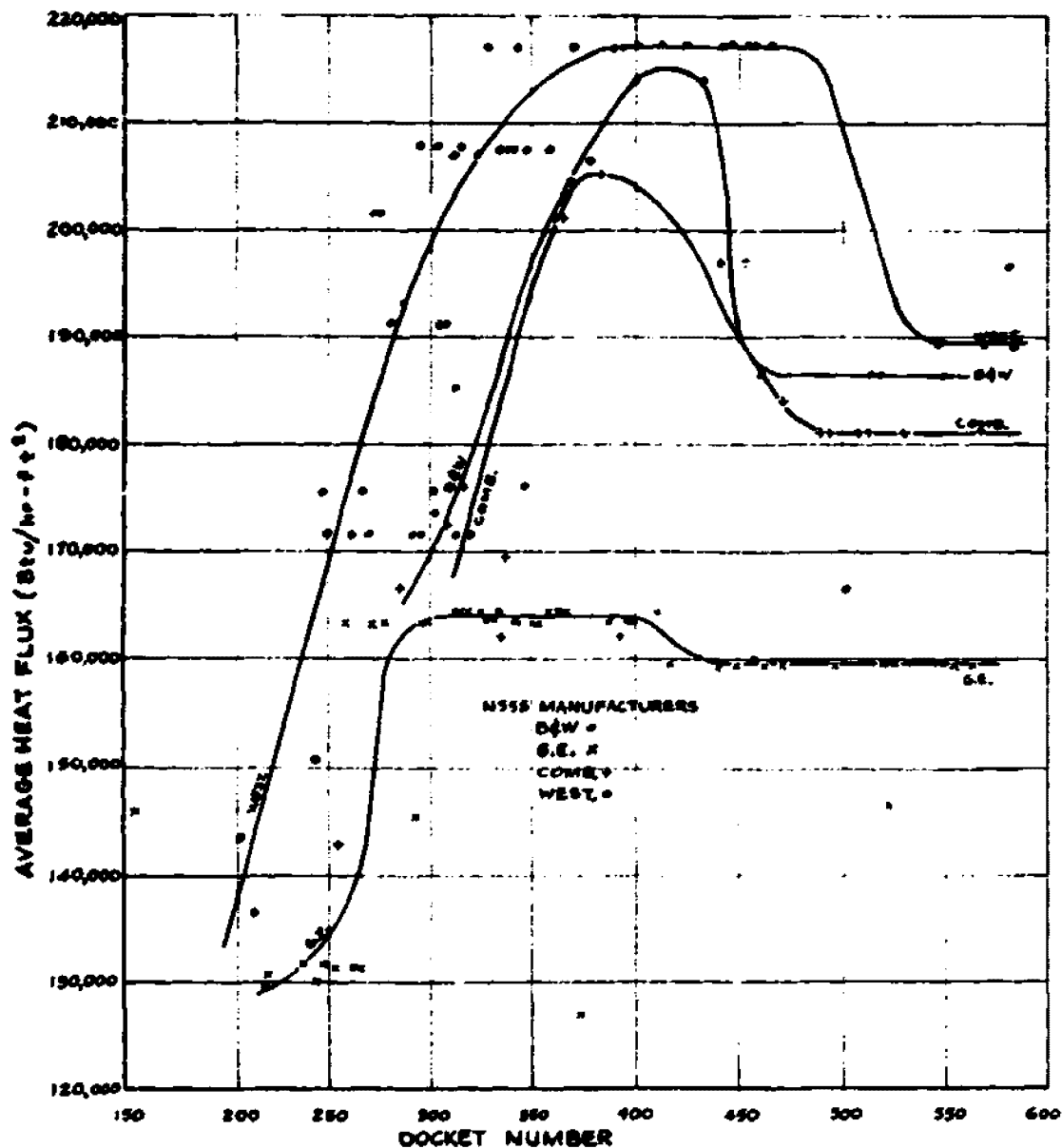


Fig. 2. Average heat flux vs docket number.

heat flux (and thermal output) of vendor designs. This limit was further reduced in the "new acceptance criteria"<sup>3</sup> promulgated in December 1974 after almost 2 years of intermittent Rule-Making Hearings.<sup>4</sup> The "new criteria" set better standards for calculation of fuel centerline temperatures for increased conservatism and for new design efforts to



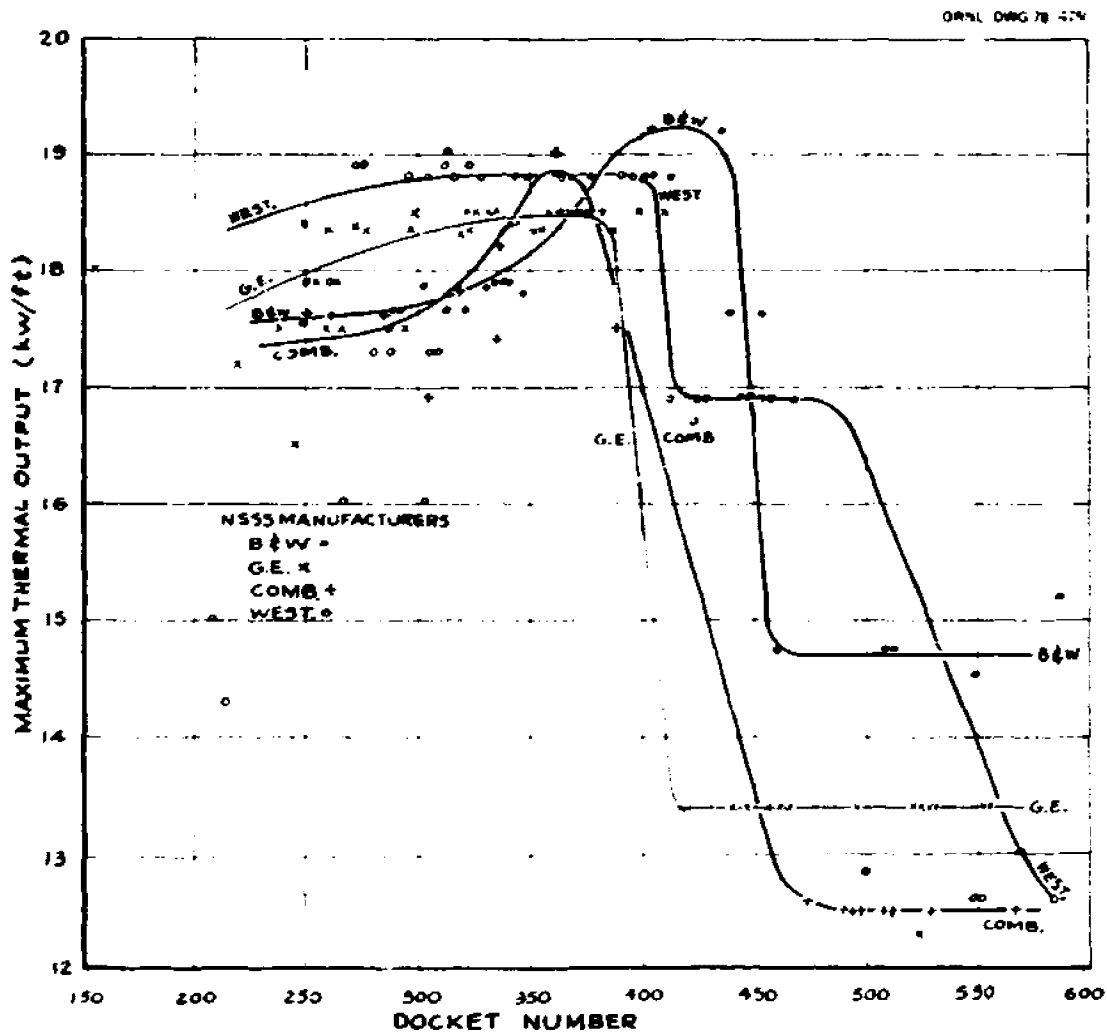


Fig. 3. Maximum thermal output vs docket number.

optimize core thermal-hydraulics and fuel pin parameters. It is clear that the observed changes in the fuel and core performance, as shown in Figs. 2 and 3, reflect the effect of the new ECCS criteria.

The relative position of the various NSSL manufacturers' curves is dependent upon the different core designs and especially the pin diameters used by the different manufacturers. As would be expected, the General Electric Co. (GE) data is the lowest in Fig. 2, since the heat flux in BWRs is lower than in PWRs.

A thorough study of all factors to adequately explain all the ramifications of these curves is beyond the scope of this report; however, the curves do present interesting aspects of power reactor evaluation.

## 2.3 Site Data

### 2.3.1 Populations around plants

Table 3 gives the number of people living within a 2-mile radius of each plant. This population size varies from 0 for Salem, Crystal River, Hope Creek, WPPSS 1 and 4, and Sundesert to 25,600 for Zion.

Plants with populations from 1 to 50 in the 2-mile radius are:

Dresden - 50	Wolf Creek - 38
Diablo Canyon - 4	South Texas - 9
Surry - 7	Blue Hills - 5
Cooper - 41	Pebble Springs - 9
Vogtle - 15	Palo Verde - 2
Comanche Peak - 41	

Plants with large populations in the 2-mile radius are:

Zion - 25,600	Fermi - 4967
Indian Point - 21,700	Millstone - 4776
Beaver Valley - 6346	Midland - 4577
Limerick - 5258	

### 2.3.2 Size of plant sites

About half of the plants are located on sites of 1000 acres or less, and about half are located on sites larger than 1000 acres.

The smaller sites are 250 acres or less, and most of these are the older plants, such as:

- San Onofre 1, 2, 3 - 83 acres
- Vermont Yankee - 125 acres
- Indian Point 1, 2, 3 - 130 acres
- Humboldt Bay - 143 acres

The larger sites in excess of 10,000 acres are:

Sumner - 11,000 acres	Harris - 18,000 acres
Allens Creek - 11,000 acres	Catawba - 23,600 acres
South Texas - 12,250 acres	McGuire - 30,000 acres
Clinton - 15,000 acres	

### 2.3.3 Safe-shutdown earthquake

Safe-shutdown-earthquake (SSE) design values are shown graphically on a map of the United States (see Fig. 4). At the location of each plant site there is a small dot, and the plant name and SSE value are recorded nearby. With this method of presentation, one can scan an entire region and review the SSE design values therein. For instance, SSE design values in North Carolina and South Carolina vary from 0.10 for Oconee to 0.20 for Robinson, and all other values are either 0.12, 0.15, or 0.16. These figures also help the reader to locate the general vicinity of the various plants.

## 2.4 Circulating-Water Systems

The circulating-water systems of each plant have been categorized and listed in Tables 7 through 17, and the high and low temperature rise across the main condensers are shown in Tables 5 and 6.

Tables 7 through 17 list all the plants and indicate the type of cooling system employed, such as once-through systems or cooling towers. The various classifications are:

- Table 7 - Once-through (rivers)
- Table 8 - Once-through (the Great Lakes)
- Table 9 - Once-through (oceans and bays)
- Table 10 - Once-through (estuaries)
- Table 11 - Once-through (lakes and reservoirs)
- Table 12 - Spray canals and cooling ponds
- Table 13 - Closed-cycle towers (mechanical draft)
- Table 14 - Closed-cycle towers (natural draft)
- Table 15 - Variable- or helper-cycle towers (mechanical draft)
- Table 16 - Variable- or helper-cycle towers (natural draft)
- Table 17 - Special situations



1. *Journal of the American Medical Association*, 1997; 278: 1039-1044.

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nuclear plant locations in the United States and safe-  
make design values.

Table 5. Circulating-water system

Name	High temperature rise ( $\Delta/^{\circ}\text{F}$ ) across condenser		
	Once through	Towers, mechanical - natural	Cooling lake or spray canal
Nine Mile Point	32		
Fitzpatrick	32		
Seabrook	44	30.4	
Tyrone		37	
NEP			
Watts Bar			38
Bellefonte			36
Hartsville			36
Skagit			39
Quanicassee			30
Wolf Creek			30.4

Table 6. Circulating-water system

Name	Low temperature rise ( $\Delta/^{\circ}\text{F}$ ) across condenser		
	Once through	Towers, mechanical - natural	Cooling lake or spray canal
Indian Point	12.6		
Oyster Creek	14		
Salem	13.6		
Surry	14		
Calvert Cliffs	10		
Vermont Yankee		20	
Hatch		20	
Farley		20	
Three Mile Island			20
Fermi			18
Zimmer			20
Ba'illy			14
Turkey Point			16
Robinson			18
Allens Creek			19.5
South Texas			19

**Table 7. Once-through circulating-water system (rivers)**

Plant	River
Dresden 1	Kankakee River
Yankee Rowe	Deerfield River
Connecticut Yankee	Connecticut River
Quad Cities 1	Mississippi River
Fort Calhoun 1 and 2	Missouri River
Cooper	Missouri River
Waterford	Mississippi River
LaCrosse	Mississippi River

**Table 8. Once-through circulating-water system (Great Lakes)**

Plant	Lake
Big Rock Point	Lake Michigan
Nine Mile Point	Lake Ontario
Ginna	Lake Ontario
Point Beach	Lake Michigan
Zion	Lake Michigan
Kewanee	Lake Michigan
Cook	Lake Michigan
Fitzpatrick	Lake Ontario
Bailly	Lake Michigan
Sterling	Lake Ontario



Table 9. Once-through circulating-water system (oceans, bays, etc.)

Plant	Body of water
Humbolt Bay	Pacific Ocean
San Onofre	Pacific Ocean
Millstone <sup>a</sup>	Long Island Sound
Diablo Canyon	Pacific Ocean
Crystal River	Gulf of Mexico
Calvert Cliffs	Chesapeake Bay
Shoreham	Long Island Sound
St. Lucie	Atlantic Ocean
Seabrook	Atlantic Ocean
North Coast	Atlantic Ocean
Mendocino	Pacific Ocean
Pilgram	Cape Cod Bay
Atlantic	Atlantic Ocean
Jamesport	Long Island Sound
NEP	Atlantic Ocean

<sup>a</sup>See Table 17 - Special situations.

Table 10. Once-through circulating-water system (estuaries)

Plant	Estuary
Indian Point	Hudson River
Oyster Creek	Barnegat Bay
Salem	Delaware River
Surry	James River
Maine Yankee	Back River
Brunswick	Cape Fear River
Hope Creek	Delaware River

Table 11. Once-through circulating-water system  
(lakes and reservoirs)

Plant	Body of water
Peach Bottom 1	Conowingo Pond of the Susquehanna River
Robinson <sup>a</sup>	Lake Robinson
Oconee	Lake Keowee
Arkansas	Dardanelle Reservoir of the Arkansas River
Bell	Lake Cayuga
North Anna	North Anna Reservoir on North Anna River
McGuire	Lake Norman of the Catawba River
Summer <sup>a</sup>	Lake Monticello
Harris	Special Reservoir
Comanche Peak	Squaw Creek Reservoir
Clinton	Salt Creek Reservoir

<sup>a</sup>See Table 17 - Special situations.

Table 12. Once-through circulating-water system  
(spray canals and cooling ponds)

Plant	Makeup water
Dresden 2 and 3	Kankakee River
Turkey Point	Biscayne Bay
Quad Cities	Mississippi River
Midland	Tittabawassee River
LaSalle	Illinois River
Surry 3 and 4	James River
Greenwood	Lake Huron
Braidwood	Kankakee River
Allens Creek	Brazos River
Wolf Creek	Wolf Creek
South Texas	Colorado River
Pebble Springs	Columbia River

**Table 13. Closed-loop circulating-water  
system with mechanical draft  
cooling towers**

<b>Plant</b>	<b>Makeup water</b>
Palisades	Lake Michigan
Ft. St. Vrain	South Platte River
Hatch	Altamaha River
Arnold	Cedar Rapids River
Farley	Woodruff Reservoir of the Chattahoochie River
WPPSS 2	Columbia River
Catawba	Lake Wylie
River Bend	Mississippi River
WPPSS 1 and 4	Columbia River
Tyrone	Chippewa River
Perkins	Yadkin River
Cherokee	Broad River
Blue Hills	Toledo Bend Reservoir of the Sabine River
Palo Verde <sup>a</sup>	City of Phoenix sewage system
Clinch River	Clinch River
Marble Hill	Ohio River
Black Fox	Verdigris River
Yellow Creek	Pickwick Reservoir of the Tennessee River
Sundesert	Palo Verde Drain and Colorado River

<sup>a</sup>See Table 17 - Special Situations.

Table 14. Closed-loop circulating-water system with natural draft cooling towers

Plant	Makeup water
Three Mile Island	Susquehanna River
Rancho Seco	Folsom Canal
Fernald <sup>a</sup> (with pond)	Lake Erie
Trojan	Columbia River
Davis-Besse	Lake Erie
Limerick	Schuylkill River
Zimmer	Ohio River
Forked River	Barnegat Bay
Arkansas 2	Dardanelle Reservoir of the Arkansas River
Susquehanna	Susquehanna River
Watts Bar	Chickamauga Reservoir of the Tennessee River
Beaver Valley 2	Ohio River
Grand Gulf	Mississippi River
Vogtle	Savannah River
Bellefonte	Guntersville Reservoir of the Tennessee River
Perry	Lake Erie
Douglas Point	Potomac River
Summit <sup>a</sup>	Chesapeake and Delaware Canal
Byron	Rock River
Fulton	Conowingo Pond of the Susquehanna River
Quanticassee	Wadock Canal
Callaway	Missouri River
Montague	Connecticut River
Davis-Besse	Lake Erie
Koshkonong (Haven)	Lake Michigan
WPPSS 3 and 5	Ranney Wells along the Chehalis River
Kartoville	Old Hickory Reservoir of the Cumberland River
Skagit	Ranney Wells along the Skagit River
Barton	Coosa River
Greene County	Hudson River
Phipps Bend	Holston River
Erie	Lake Erie

<sup>a</sup>See Table 17 - Special Situations.

Table 15. Variable-cycle or helper-cycle circulating-water system with mechanical draft cooling towers

Plant	Makeup water
Browns Ferry	Wheeler Lake of the Tennessee River
Monticello	Mississippi River
Vermont Yankee	Connecticut River
Peach Bottom 2 and 3	Conowingo Pond of the Susquehanna River
Prairie Island	Mississippi River

Table 16. Variable-cycle or helper-cycle circulating-water system with natural draft cooling towers

Plant	Makeup water
Sequoyah	Chickamauga Reservoir of the Tennessee River
Beaver Valley	Ohio River

Table 17. Special situations in circulating-water systems

Plant	Circulating-water system
Millstone	Once-through system discharging through a quarry.
Robinson	2250-acre reservoir used as a cooling lake.
Fermi	Natural draft towers discharging to a 50-acre cooling pond in a closed cycle.
Summer	The 7000-acre Lake Monticello will be used for once-through cooling. Also Lake Monticello is a pumped storage lake off Parr Reservoir yielding 480 MW(e) of generating capacity.
Palo Verde	Makeup water for mechanical draft towers to be sewage water from the City of Phoenix, Arizona.
Summit	Fan-assisted natural draft towers will be used. Makeup water will have high salinity.

There are only two plants where natural draft towers will be cooling high-saline water: Forked River and Summit.

The term  $\text{gpm}/[\text{MW(e)} \times \Delta^\circ\text{F}]$  is an index number that expresses in a nondimensional manner how the circulating-water system is designed. The gpm and the  $\Delta t$  values across the condenser, as taken from the Preliminary Safety Analysis Report (PSAR), are hopefully average values, but it is possible that the two values as given might not both be under the same conditions. If the value shown for this term varies greatly from the values for similar plants, it is possible that the gpm and  $\Delta t$  values taken from the PSAR are not under the same conditions. For once-through systems,  $\text{gpm}/\text{MW(e)} \times \Delta^\circ\text{F}$  averages about 40, with spray ponds and cooling ponds averaging 32. Closed-loop systems with mechanical draft towers average 22.3, and closed-loop systems with natural draft towers average 15.4.

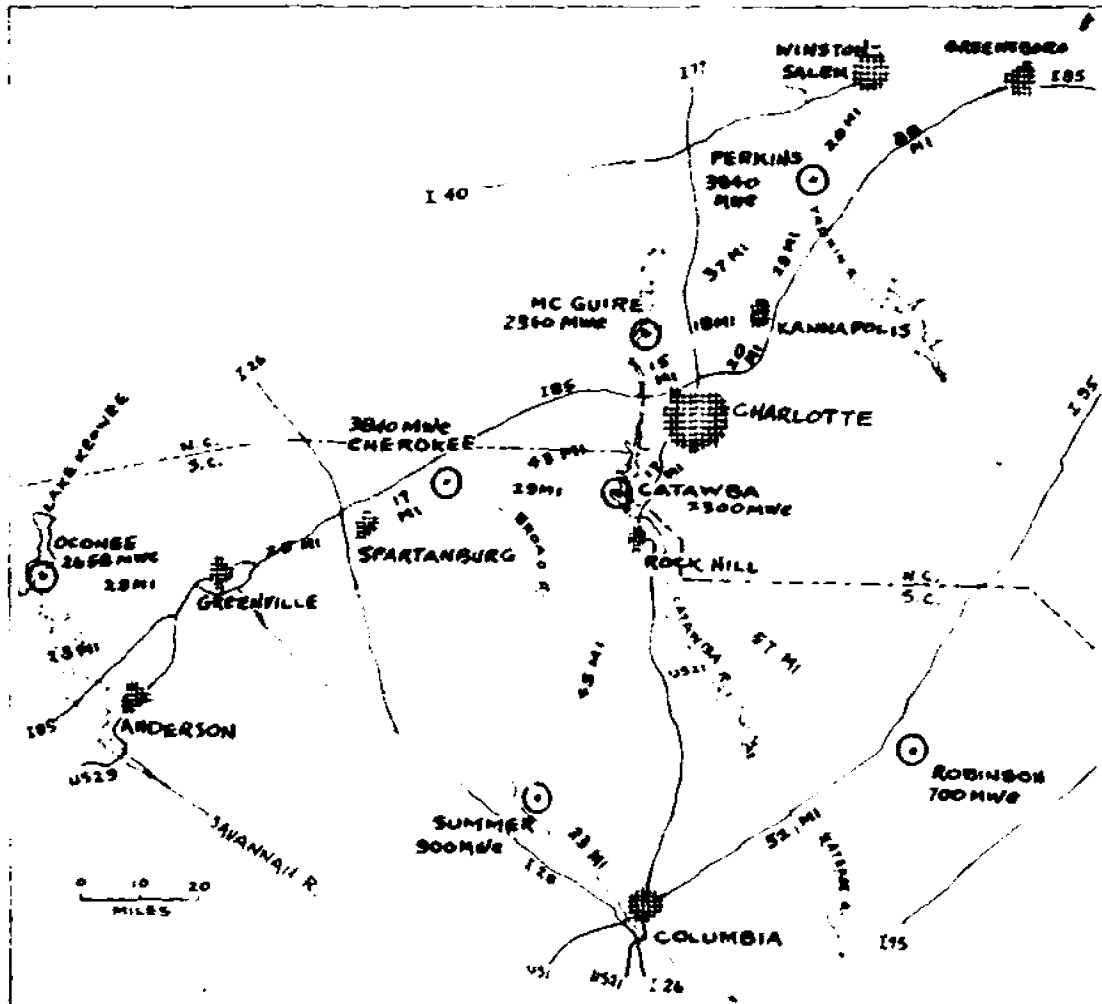
It is evident that the newer plants generally have lower values for the term, which is probably due to designing for lower flows and higher  $\Delta t$  across the condenser.

The value can also be used to compare for different plants the steam-electrical systems and the heat-removal systems as well as the different types of circulating-water systems.

## 2.5 Generating Capacity Concentrations

There are some areas in the United States where nuclear power plants are located near each other, say within 50 miles of each other. Where such situations occur, there will be a concentration of nuclear generating capacity. Several areas of the United States have been reviewed, and maps have been drawn to show the power plant locations with respect to each other, to rivers, lakes, etc., and to cities (see Figs. 5 through 19). These maps are all drawn to the same scale so that different areas can be related to each other.

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**Fig. 5. North Carolina—South Carolina area.**

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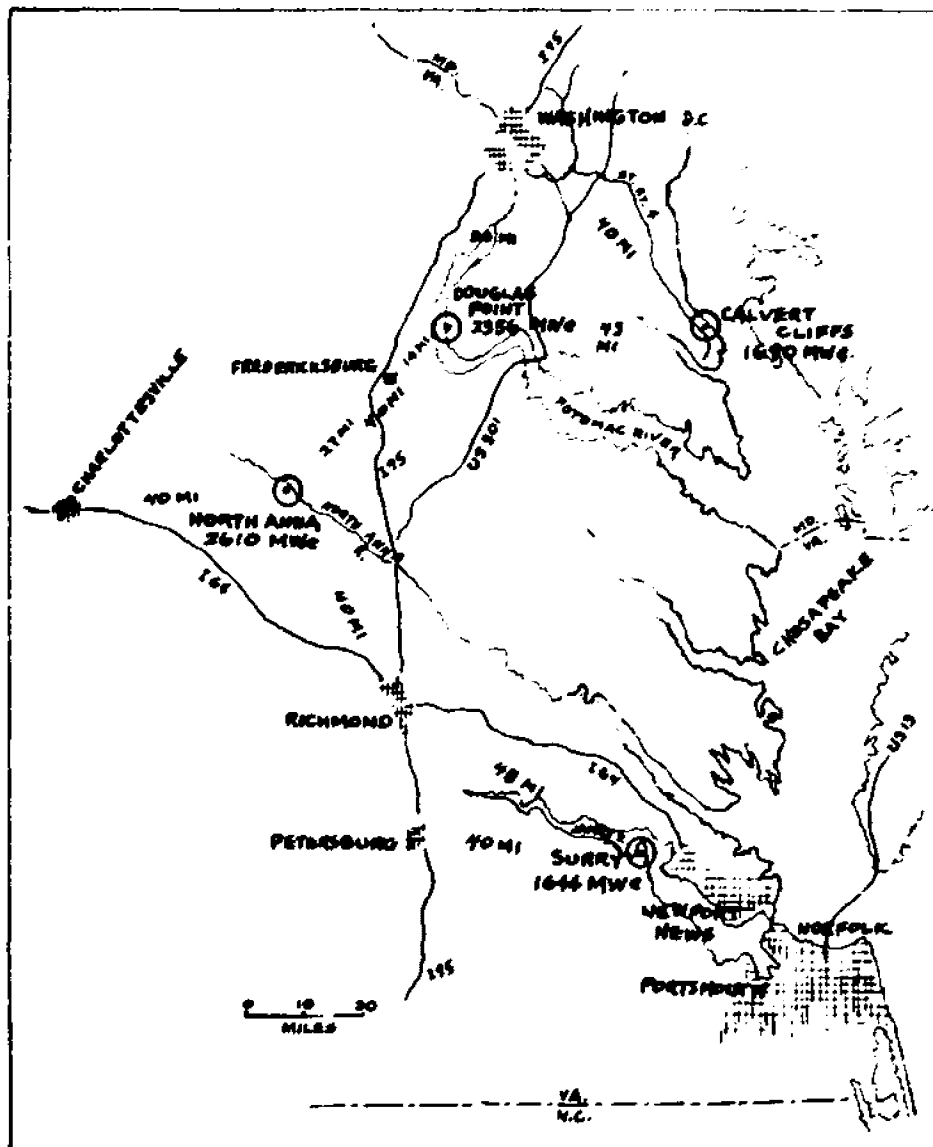
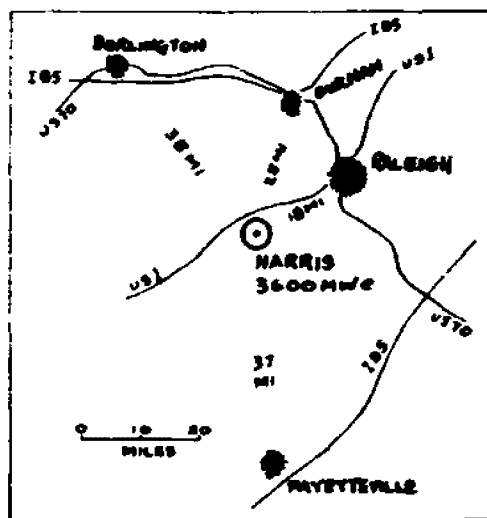


Fig. 6. Virginia-Washington, D.C. area.

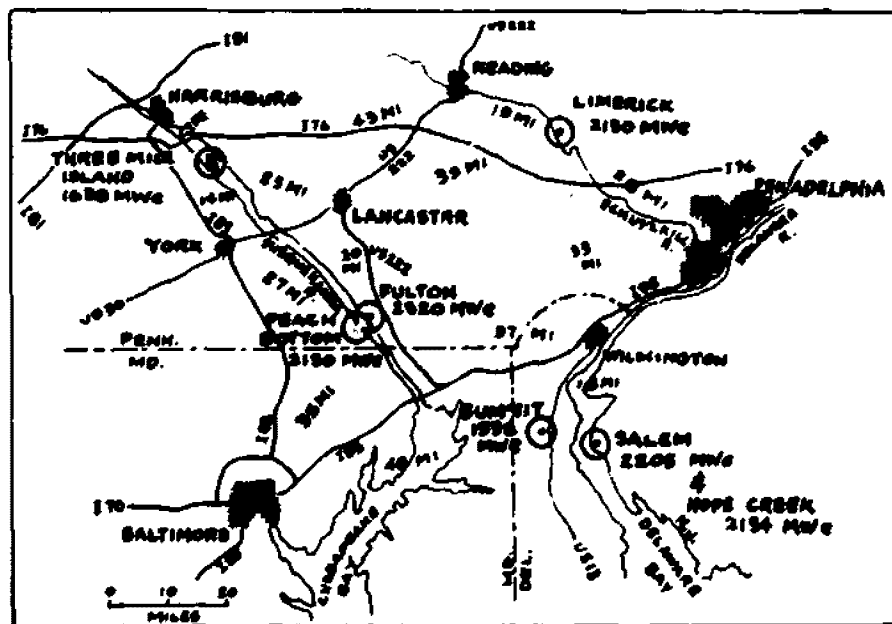


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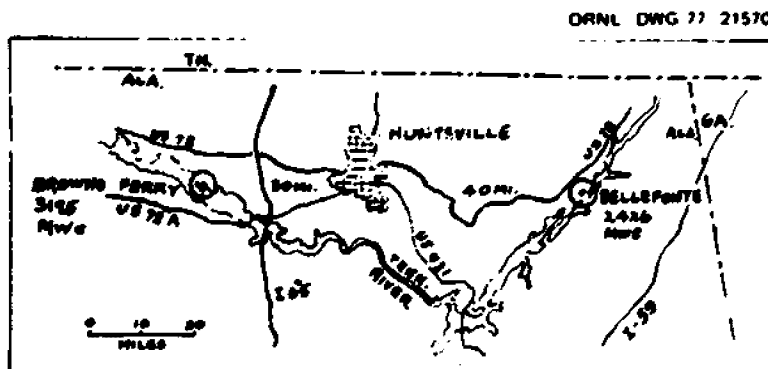
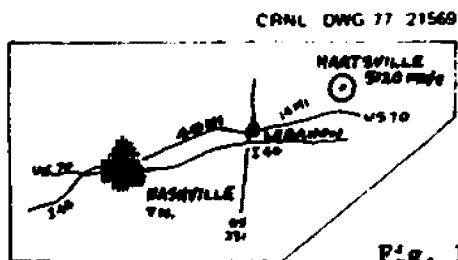
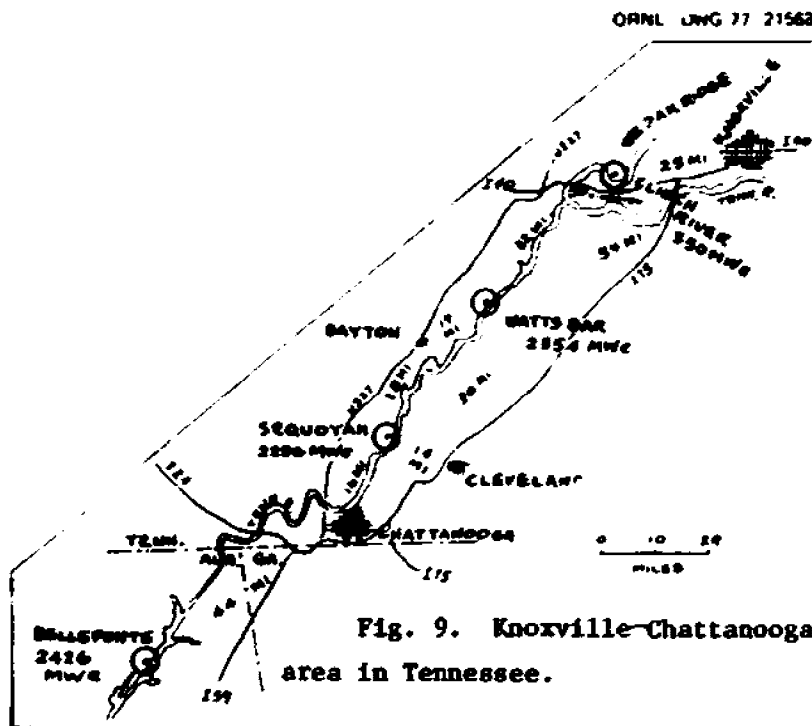


**Fig. 7. Raleigh-Durham area in North Carolina.**

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**Fig. 8. Baltimore-Philadelphia area.**



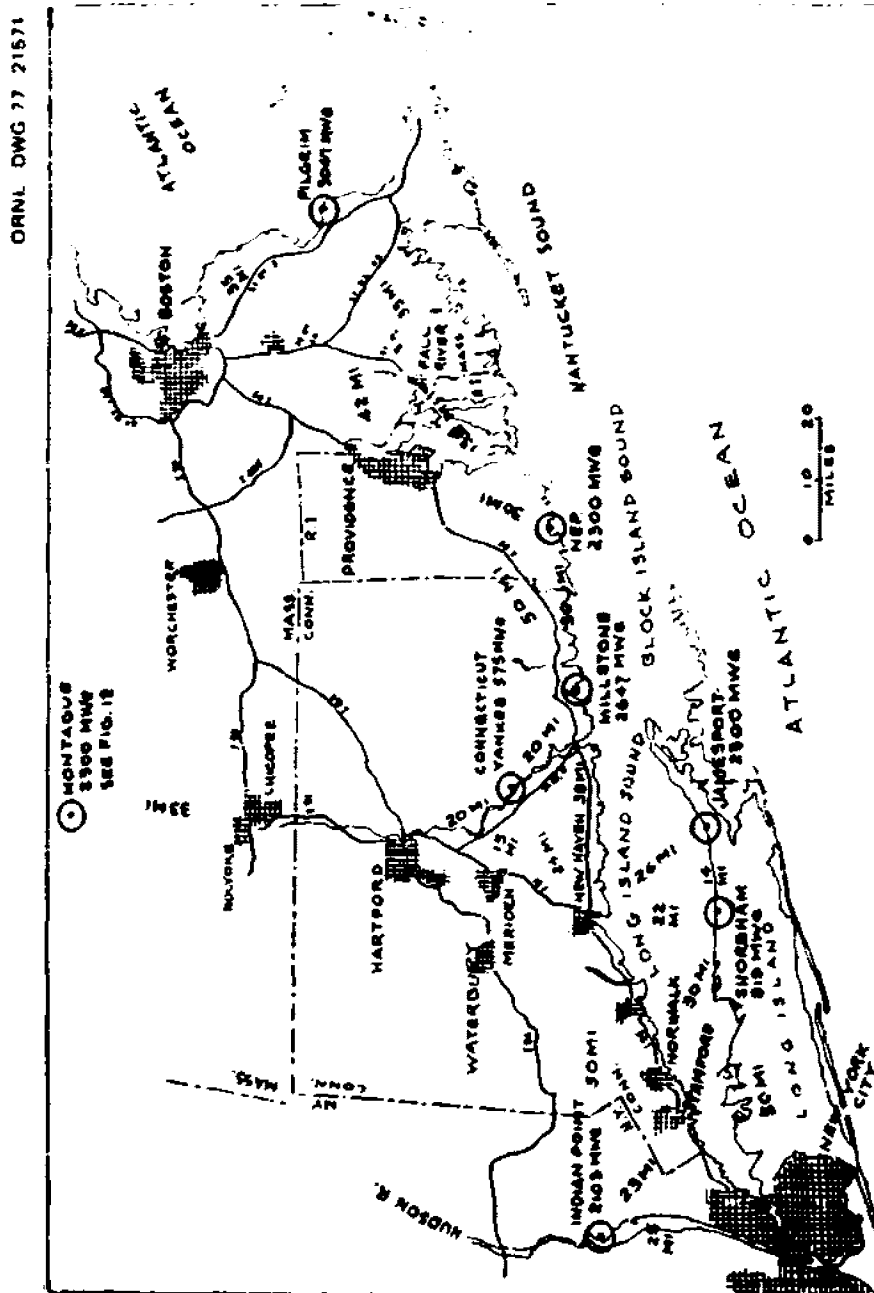


Fig. 12. Coastal area - New York City to Boston.

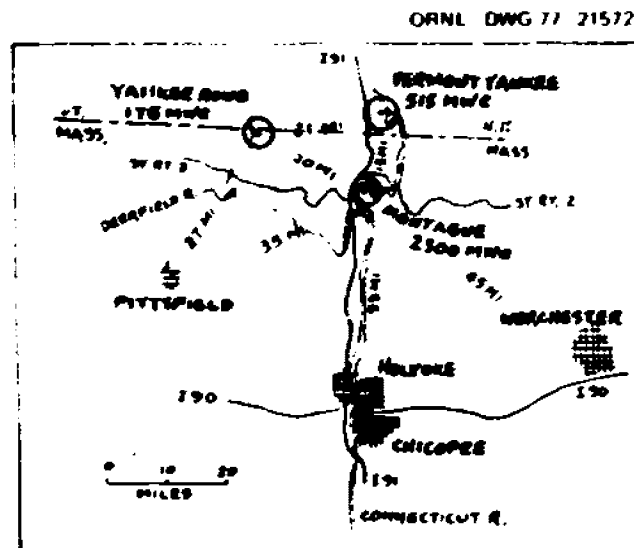


Fig. 13. Three-plant area - Vermont, New Hampshire, and Massachusetts.

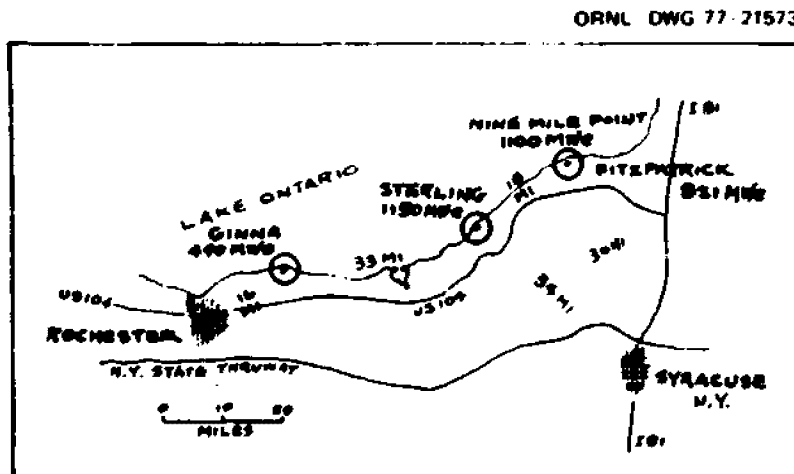


Fig. 14. Rochester-Syracuse-Lake Ontario area.

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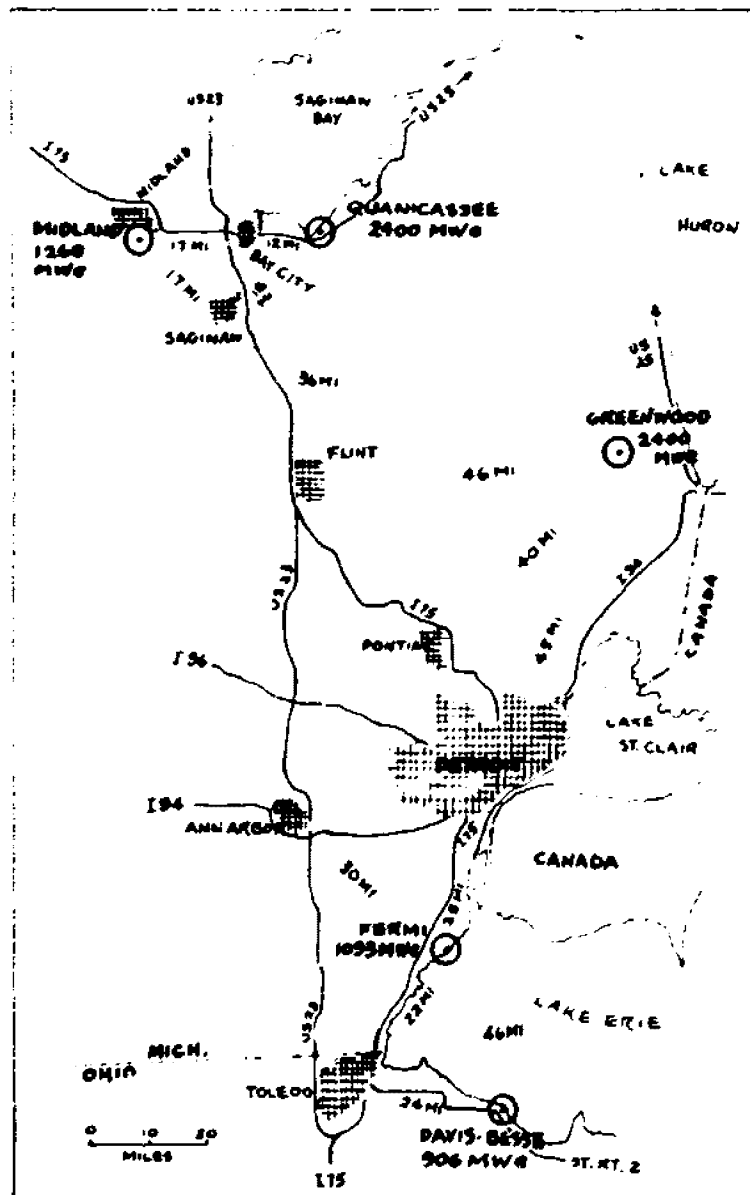


Fig. 15. Detroit and southeast Michigan.

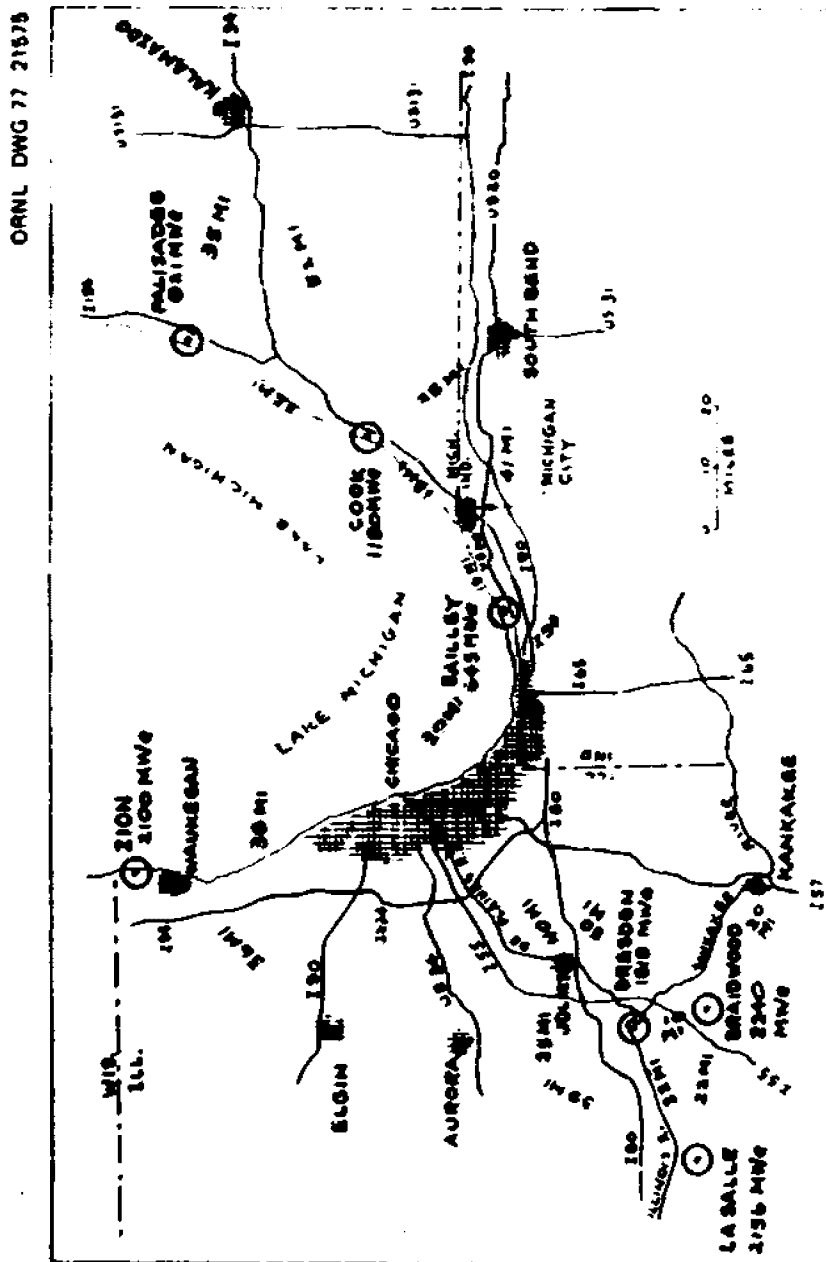


Fig. 16. Chicago and Lake Michigan area.

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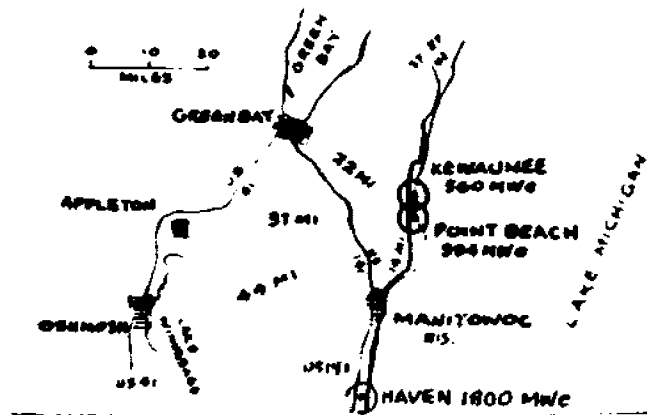


Fig. 17. Eastern Wisconsin and Green Bay area.

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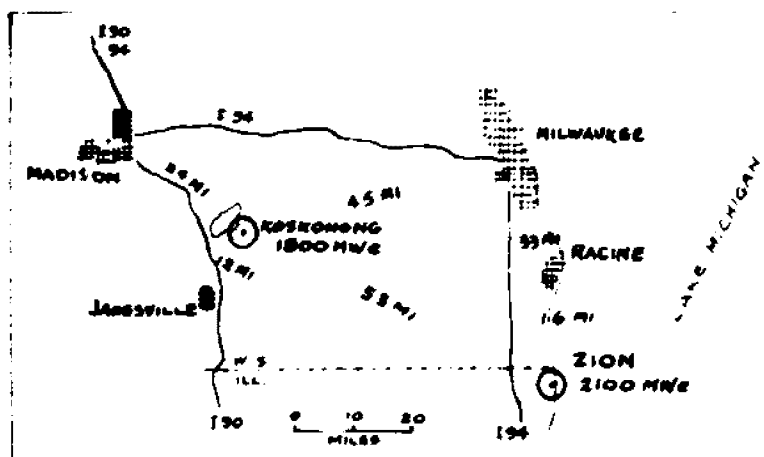


Fig. 18. Southeast Wisconsin area.

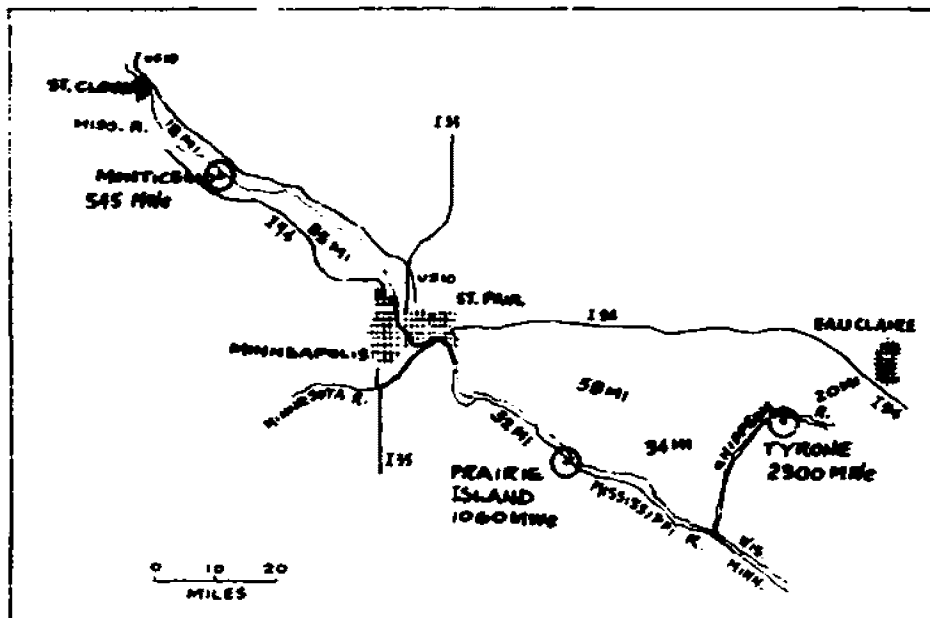


Fig. 19. Minneapolis-St. Paul area.



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15. NUS Corporation, *Commercial Nuclear Power Plants*, 8th edition, January 1976.

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**From:** Luc, Matthew D <LucMD@state.gov>  
**Sent:** Monday, February 27, 2017 6:23 PM  
**To:** FOIA Resource  
**Cc:** Grosso, Elizabeth  
**Subject:** [External\_Sender] URGENT FOIA Referral for External Consultation (F-2013-19970) - LITIGATION  
**Attachments:** Cause of Action COMPLAINT.pdf; CoA original request.pdf; NRC consult doc.pdf; NRC memo.pdf

Hello,

Attached please find our request for NRC consultation on documents in FOIA Litigation Case F-2013-19970 (Cause of Action). I have included our request letter, a copy of the FOIA request, complaint, and copies of the documents for your review. Please email me at [LucMD@state.gov](mailto:LucMD@state.gov), if you have any questions or concerns. We appreciate your response no later than March 10, 2017.

Please note we are continuing to review materials and may have additional documents for referral.

Thank you for your cooperation.

Regards,

*Matthew D Luc* MSCIS

Litigation Analyst  
Litigation & Appeals Branch  
Programs & Policies Division  
Office of Information Programs & Services  
SA-2, 4033, U.S. Department of State  
A/GIS/IPS/PP/LA  
Office Number: 202-261-8359  
Blackberry Number: (b)(6)  
[LucMD@state.gov](mailto:LucMD@state.gov) | [LucMD@state.sgov.gov](mailto:LucMD@state.sgov.gov)



~~Official SBU~~  
UNCLASSIFIED

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

2014 AUG 28 P 3:03

DEPARTMENT OF STATE

Cause of Action

Plaintiff

v.

Internal Revenue Service, et al.

Defendant

Civil Action No.

SERVICE ACCEPTED IN  
OFFICIAL CAPACITY ONLY  
*Barbara Barnett Spencer, Acting*  
EXECUTIVE DIRECTOR  
OFFICE OF THE LEGAL ADVISER

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

United States Department of State  
2201 C Street, NW  
Washington, D.C. 20520

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Prashant Khetan  
Allan Blutstein  
CAUSE OF ACTION  
1919 Pennsylvania Avenue, NW  
Suite 650  
Washington, D.C. 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

/S/ KRISTIN BROWN

Date: 8/18/2014



Signature of Clerk or Deputy Clerk

FOIA Summons (12/11) (Page 2)

Civil Action No. 14-1407 EGS

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)* \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CAUSE OF ACTION )  
1919 Pennsylvania Avenue, NW, Suite 650 )  
Washington, D.C. 20006, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
INTERNAL REVENUE SERVICE )  
1111 Constitution Avenue, NW )  
Washington, D.C. 20224, )  
 )  
OFFICE OF MANAGEMENT AND BUDGET )  
725 17th Street, NW )  
Washington, D.C. 20503, )  
 )  
UNITED STATES DEPARTMENT OF )  
DEFENSE )  
1400 Defense Pentagon )  
Washington, D.C. 20301, )  
 )  
UNITED STATES DEPARTMENT OF )  
ENERGY )  
1000 Independence Avenue, SW )  
Washington, D.C. 20585, )  
 )  
UNITED STATES DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES )  
200 Independence Avenue, SW )  
Washington, D.C. 20201, )  
 )  
UNITED STATES DEPARTMENT OF )  
HOMELAND SECURITY )  
245 Murray Lane, SE )  
Washington, D.C. 20528, )  
 )  
UNITED STATES DEPARTMENT OF )  
HOUSING AND URBAN DEVELOPMENT )  
451 7th Street, SW )  
Washington, D.C. 20410, )

UNITED STATES DEPARTMENT OF )  
JUSTICE )  
950 Pennsylvania Avenue, NW )  
Washington, D.C. 20530, )  
)  
UNITED STATES DEPARTMENT OF STATE )  
2201 C Street, NW )  
Washington, D.C. 20520, )  
)  
UNITED STATES DEPARTMENT OF )  
TRANSPORTATION )  
1200 New Jersey Avenue, SE )  
Washington, D.C. 20590, )  
)  
UNITED STATES DEPARTMENT OF THE )  
TREASURY )  
1500 Pennsylvania Avenue, NW )  
Washington, D.C. 20220, and )  
)  
UNITED STATES DEPARTMENT OF )  
VETERANS AFFAIRS )  
810 Vermont Avenue, NW )  
Washington, D.C. 20420, )  
)  
Defendants. )

### COMPLAINT

This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), seeking access to agency records requested by Plaintiff Cause of Action (“CoA”) and improperly stonewalled by Defendants Internal Revenue Service (“IRS”), Office of Management and Budget (“OMB”), United States Department of Defense (“DOD”), United States Department of Energy (“DOE”), United States Department of Health and Human Services (“HHS”), United States Department of Homeland Security (“DHS”), United States Department of Housing and Urban Development (“HUD”), United States Department of Justice (“DOJ”), United States Department of State (“DOS”), United States Department of Transportation (“DOT”), United States

Department of the Treasury ("DOTRES"), and United States Department of Veterans Affairs ("VA") (collectively, "Defendants").

### NATURE OF ACTION

1. In 2013, CoA learned of a previously undisclosed White House memorandum from April 2009 written by the then-Counsel to the President, in which the White House advised *all* federal agency and department general counsels to consult with the White House on *all* document requests that may involve documents with "White House equities." See Ex. 1 (the "Craig Memo"). The phrase "White House equities" was and still is not defined by the White House or other authority, but federal FOIA officials have reported that agencies consult with the White House when requested records are politically sensitive or embarrassing to the Administration. See, e.g., Jeffrey Scott Shapiro, *Worse than Nixon? Obama White House Accused of Hiding Public Information*, THE WASH. TIMES (June 30, 2014), <http://www.washingtontimes.com/news/2014/jun/30/white-house-censors-and-slows-release-of-informati/?page=all>.

2. In so doing, the White House is demanding access to records and otherwise influencing agencies' FOIA obligations to produce responsive documents in a manner that is not countenanced by the law. Indeed, the "most transparent administration in history" has injected itself into a process (FOIA) presumably to self-regulate what agency records are produced to the public, when that process exists solely so that "citizens [may] know 'what their Government is up to.'" Moreover, agencies themselves recognize their obligation to produce records to the public *unless* an enumerated exemption or special record exclusion applies -- no such exemption or exclusion exists because the White House does not want the public to know of a document.



3. Concerned with the White House's involvement in this process, CoA sent FOIA requests to Defendants seeking records of communications between agency officials and the White House in connection with requests for documents by Congress and/or FOIA requestors to those agencies (without actually asking for the voluminous documents themselves).

4. By an average of eight months, and some as long as fourteen months, Defendants have continued to delay in producing responsive documents and not a single Defendant has made a final determination as to CoA's FOIA requests.

5. As a result, CoA has no choice but to file this lawsuit to obtain an Order requiring each Defendant to comply with its obligations under FOIA to make a final determination and produce all responsive documents.

#### **JURISDICTION AND VENUE**

6. The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 552(a)(4)(B), (a)(6)(E)(iii).

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).

#### **PARTIES**

8. CoA is a nonpartisan, non-profit organization that uses public advocacy and legal reform strategies to ensure greater transparency in the Government and to protect taxpayer interests and economic freedom. In furtherance of its public interest mission, CoA regularly requests access to the public records of federal government agencies, entities, and offices, and disseminates its findings to the public.

9. Each Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1).

## STATEMENT OF FACTS

### A. THE CRAIG MEMO

10. By a White House memorandum dated April 15, 2009, the Counsel to the President, Gregory Craig, advised the general counsels of all federal agencies to consult with the Office of White House Counsel “on all document requests that may involve documents with White House equities.” *See* Ex. 1.

11. The Craig Memo further explains that “[t]his need to consult with the White House arises with respect to all types of document requests, including Congressional committee requests, GAO requests, judicial subpoenas, and FOIA requests.” *Id.*

12. The White House consultation process set forth in the Craig Memo delays the ability of federal agencies to timely respond to FOIA requests. *See, e.g.,* C.J. Ciaramella, *Report: White House Review Hindering FOIA Releases*, FREE BEACON (March 21, 2014), <http://freebeacon.com/issues/report-white-house-review-hindering-foia-releases/> (reporting that the White House held up one journalist’s FOIA request for two years); Mark Tapscott, “*Most Transparent*” White House Ever Rewrote the FOIA to Suppress Politically Sensitive Docs, THE WASH. TIMES (March 18, 2014), <http://washingtontimes.com/most-transparent-white-house-ever-rewrote-the-foia-to-suppress-politically-sensitive-docs/article/2545824> (same).

13. The White House has not disclosed the Craig Memo on its website. *See* <http://www.whitehouse.gov/briefing-room/presidential-actions/presidential-memoranda> (last visited August 15, 2014).

14. None of the Defendants have disclosed the Craig Memo on their FOIA websites. *See* INTERNAL REVENUE SERV., <http://www.irs.gov/uac/IRS-Freedom-of-Information> (last visited August 15, 2014); OFFICE OF MGMT. & BUDGET, [http://www.whitehouse.gov/omb/foia\\_default](http://www.whitehouse.gov/omb/foia_default)

(last visited August 15, 2014); U.S. DEP'T OF DEF., <http://www.dod.mil/pubs/foi/> (last visited August 18, 2014); U.S. DEP'T OF ENERGY, <http://energy.gov/management/office-management/operational-management/freedom-information-act> (last visited August 15, 2014); U.S. DEP'T OF HEALTH & HUMAN SERV., <http://www.hhs.gov/foia/> (last visited August 15, 2014); U.S. DEP'T OF HOMELAND SEC., <http://www.dhs.gov/freedom-information-act-foia> (last visited August 15, 2104); U.S. DEP'T OF HOUS. & URBAN DEV., [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/foia](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/foia) (last visited August 15, 2014); U.S. DEP'T OF JUSTICE; <http://www.justice.gov/oip/> (last visited August 15, 2014); U.S. DEP'T OF STATE, <http://foia.state.gov/> (last visited August 15, 2014); U.S. DEP'T OF TRANSP., <http://www.dot.gov/foia> (last visited August 15, 2014); U.S. DEP'T OF THE TREASURY, <http://www.treasury.gov/FOIA/Pages/index.aspx> (last visited August 15, 2014); U.S. DEP'T OF VETERANS AFFAIRS, <http://www.foia.va.gov/> (last visited August 15, 2014).

15. None of the Defendants' FOIA regulations refer to consultations with the Office of White House Counsel, which is not a federal agency. *See* 26 C.F.R. § 601.702 (IRS); 5 C.F.R. §§ 1303.1-1303.70 (OMB); 32 C.F.R. Pt. 286 (DOD); 10 C.F.R. §§ 1004.1-1004.12 (DOE); 45 C.F.R. §§ 5.1-5.69 (HHS); 6 C.F.R. §§ 5.1-5.12 (DHS); 24 C.F.R. Pt. 15 (HUD); 28 C.F.R. Pt. 16 (DOJ); 22 C.F.R. §§ 171.10-171.17 (DOS); 49 C.F.R. Pt. 7 (DOT); 31 C.F.R. §§ 1.1-1.7 (DOTRES); 38 C.F.R. §§ 1.550-1.562 (VA).

#### **B. COA'S FOIA REQUESTS**

16. In order to shed light on the White House's opaque vetting of agency records, CoA sent substantially similar FOIA requests to Defendants, as described in detail below, seeking records of communications between certain agency officials and the Office of White House Counsel.

**C. DEFENDANTS' RESPONSES TO COA'S FOIA REQUESTS**

**IRS – Failure to Produce Responsive Documents for 14 Months**

17. CoA submitted a FOIA request to the IRS on May 29, 2013, seeking access to:

All records, including but not limited to e-mails, letters, meeting records, and phone records, reflecting communications between IRS FOIA staff or IRS Chief Counsel's office and the White House Counsel's office concerning records forwarded by the IRS for White House review in connection with document requests by Congress, the U.S. Government Accountability Office, or FOIA requesters.

Ex. 2. The time period for CoA's FOIA request was "January 2009 to the present." *Id.*

18. By letter dated June 25, 2013, the IRS acknowledged that it had received CoA's FOIA request on June 5, 2013. *See* Ex. 3. The IRS invoked a ten-day extension of time to July 18, 2014, in order to "search for, collect, and review responsive records from other locations." *Id.* The IRS purported to further extend the response deadline to August 16, 2013, and indicated that CoA's failure to reply to its letter would be considered an agreement to the extension of time. *Id.*

19. The IRS failed to make a determination as to CoA's FOIA request by August 16, 2013, even though the IRS self-extended its deadline and made that date as the new deadline. Rather, by letter dated August 13, 2013, the IRS notified CoA that it needed at least another six weeks, until September 27, 2014, to complete CoA's FOIA request. *See* Ex. 4 (all of IRS's extension letters, chronologically).

20. Over the course of the following nearly eleven months (and to this day), the IRS continuously has failed to meet its own moving response deadlines. On September 23, 2013, the IRS informed CoA that it would not meet its September 27, 2013 deadline and that it needed at least another two months, until December 20, 2013, to complete CoA's FOIA request. *Id.*

21. This pattern continued on December 10, 2013, when the IRS notified CoA that would not meet its December 20, 2013 deadline and that it needed at least another three months, until March 20, 2014, to complete CoA's FOIA request. *Id.*

22. The New Year did not bring glad tidings for CoA's FOIA request. By letter dated March 18, 2014, the IRS informed CoA that it would not meet its March 20, 2014 deadline and that it needed at least another three months, until June 20, 2014, to complete CoA's FOIA request. *Id.*

23. On June 17, 2014, the IRS informed CoA that it had failed (for the fifth time) to meet its own response deadline, and that it needed at least another three months, until September 19, 2014, to complete CoA's FOIA request. *Id.*

24. More than fourteen months have passed since the IRS received CoA's FOIA request.

25. As of the date of this Complaint, the IRS has not released a single responsive document or made a final determination as to CoA's FOIA request.

**OMB – Failure to Produce Responsive Documents for 3 Months**

26. CoA submitted a FOIA request to OMB on May 7, 2014, seeking access to:

(1) All correspondence, including but not limited to email, sent to or from [former OMB General Counsel] Ms. Bansal concerning the Craig Memo between April 15, 2009 and July 31, 2011; and

(2) All records reflecting communications between: (a) The Office of White House Counsel and OMB employees who process FOIA requests; and (b) The Office of White House Counsel and OMB's Office of General Counsel, concerning the Office of White House Counsel's review of agency records.

Ex. 5. The time period for CoA's FOIA request was "May 1, 2012 to May 7, 2014." *Id.* CoA's FOIA request noted that CoA did "not seek access to the actual records that were forwarded to

the Office of White Counsel, but only to records that reflect that such consultations occurred (for example cover emails).” *Id.*

27. By email dated May 14, 2014, OMB acknowledged that it had received CoA’s FOIA request on May 9, 2014. *See* Ex. 6.

28. More than three months have passed since OMB received CoA’s FOIA request.

29. As of the date of this Complaint, OMB has not released a single responsive document or made a final determination as to CoA’s FOIA request.

**DOD – Failure to Produce Responsive Documents for 12 Months**

30. CoA submitted a FOIA request to DOD on August 9, 2013, seeking access to:

All communications between the Office of White House Counsel and [Office of the Secretary of Defense and Joint Staff] FOIA personnel or the Department of Defense (DoD) Office of General Counsel concerning the Office of White House Counsel’s review of DoD records.

Ex. 7 (footnote omitted). The time period for CoA’s FOIA request was “August 2011 to the present.” *Id.* CoA’s FOIA request noted that CoA did “not seek access to the actual documents forwarded to the Office of White House Counsel for review, but only to the records that establish that such consultations occurred (for example, cover e-mails).” *Id.*

31. By email dated August 13, 2013, DOD acknowledged that it had received CoA’s FOIA request and that it would not be able to process it “quickly” due to “unusual circumstances.” *See* Ex. 8.

32. More than twelve months have passed since DOD received CoA’s FOIA request.

33. As of the date of this Complaint, DOD has not released a single responsive document or made a final determination as to CoA’s FOIA request.

**DOE – Failure to Produce Responsive Documents for 13 Months**

34. CoA submitted a FOIA request to DOE on June 26, 2013, seeking access to:

All records reflecting communications between DOE FOIA personnel or DOE's Office of General Counsel and the White House Counsel's office wherein DOE sought White House review of documents requested by Congress, the U.S. Government Accountability Office, or FOIA requesters.

Ex. 9. The time period for CoA's FOIA request was "January 2009 to the present." *Id.* CoA's FOIA request noted that CoA did "not seek access to the actual documents forwarded by DOE to the White House for review, but only to the records which demonstrate that such referrals occurred (for example, cover e-mails)." *Id.*

35. By letter dated July 1, 2013, DOE acknowledged that it had received CoA's FOIA request. *See* Ex. 10.

36. More than thirteen months have passed since DOE received CoA's FOIA request.

37. As of the date of this Complaint, DOE has not released a single responsive document or made a final determination as to CoA's FOIA request.

**HHS – Failure to Produce Responsive Documents for 12 Months**

38. CoA submitted a FOIA request to HHS on August 9, 2013, seeking access to:

All communications between the Office of White House Counsel and the Department's 'FOI/Privacy Acts Division' or Office of General Counsel concerning the Office of White House Counsel's review of agency documents.

Ex. 11. The time period for CoA's FOIA request was "August 2011 to the present." *Id.* CoA's FOIA request noted that CoA did "not seek access to the actual documents forwarded to the Office of White House Counsel for review, but only to the records that reflect that such consultations occurred (for example, cover e-mails)." *Id.*

39. By email dated August 13, 2013, HHS acknowledged that it had received CoA's FOIA request. *See* Ex. 12.

40. More than twelve months have passed since HHS received CoA's FOIA request.

41. As of the date of this Complaint, HHS has not released a single responsive document or made a final determination as to CoA's FOIA request.

**DHS – Failure to Produce Responsive Documents for 8 Months**

42. CoA submitted a FOIA request to DHS on August 9, 2013, seeking access to: records reflecting all communications between (1) The Office of White House Counsel and the U.S. Department of Homeland Security (DHS) Privacy Office, and (2) The Office of White House Counsel and the DHS Office of the General Counsel, concerning the Office of White House Counsel's review of agency records.

Ex. 13 (footnote omitted). The time period for CoA's FOIA request was "January 1, 2012 to the present." *Id.* CoA's FOIA request noted that CoA did "not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails)." *Id.*

43. By letter dated December 6, 2013, DHS acknowledged that it had received CoA's FOIA request. *See* Ex. 14.

44. At the same time, DHS granted CoA's request to be recognized as a representative of the news media for fee purposes, and it "conditionally" granted CoA's request for a fee waiver. *See id.* Later that same day, however, DHS reversed its position and informed CoA that it now believed CoA was not a representative of the news media, but rather a "non-commercial requester." *See* Ex. 15. CoA filed a timely appeal of this fee category determination, which was remanded and then affirmed by DHS.

45. More than eight months have passed since DHS received CoA's FOIA request.

46. As of the date of this Complaint, DHS has not released a single responsive document or made a final determination as to CoA's FOIA request.



**HUD - Failure to Produce Responsive Documents for 8 Months**

47. CoA submitted a FOIA request to HUD on November 26, 2013, seeking access to:

records reflecting communications between (1) The Office of White House Counsel and the U.S. Department of Housing and Urban Development (HUD) FOIA Office, and (2) The Office of White House Counsel and the HUD Office of the General Counsel, concerning the Office of White House Counsel's review of agency records.

Ex. 16 (footnote omitted). The time period for CoA's FOIA request was "January 1, 2012 to the present." *Id.* CoA's FOIA request noted that CoA did "not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails)." *Id.*

48. By letter dated December 27, 2013, HUD acknowledged that it had received CoA's FOIA request on December 3, 2013. Ex. 17.

49. Nearly four months later, on April 21, 2014, HUD informed CoA that it was entitled to extend the statutory time within which to respond to CoA's request due to an ongoing search for responsive records. Ex. 18. HUD stated that its search and review "should be completed within the next 15 to 20 days." *Id.*

50. More than eight months have passed since HUD received CoA's FOIA request.

51. As of the date of this Complaint, HUD has not released a single responsive document or made a final determination as to CoA's FOIA request.

**DOJ - Failure to Produce Responsive Documents for at least 6 Months**

52. CoA submitted separate but virtually identical FOIA requests to DOJ's Office of Information Policy ("OIP") and DOJ's Office of Legal Counsel ("OLC") on November 26, 2013 and February 10, 2014, respectively, seeking access to:

records reflecting all communications between (1) the Office of White House Counsel and [OIP or OLC], and (2) The Office of White House Counsel and the DOJ Office of the General Counsel, concerning the Office of White House Counsel's review of agency records.

Exs. 19-20, respectively (footnotes omitted). The time period for CoA's FOIA requests was "January 1, 2012 to the present." *Id.* CoA's FOIA requests noted that CoA did "not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails)." *Id.*

53. By letter dated January 7, 2014, OIP acknowledged that it had received CoA's FOIA request on December 5, 2013. *See* Ex. 21. OIP further stated that DOJ did not have an "Office of the General Counsel." *Id.* CoA did not receive OIP's letter until February 7, 2014.

54. By letter dated March 10, 2014, OLC acknowledged that it had received CoA's FOIA request. Ex. 22.

55. More than eight months have passed since OIP received CoA's FOIA request.

56. More than six months have passed since OLC received CoA's FOIA request.

57. As of the date of this Complaint, neither OIP nor OLC has released a single responsive document or made a final determination as to CoA's FOIA requests.

**DOS - Failure to Produce Responsive Documents for 8 Months**

58. CoA submitted a FOIA request to DOS on November 26, 2013, seeking access to:

records reflecting communications between (1) the Office of White House Counsel and the U.S. Department of State (DOS) Office of Information Programs and Services, and (2) The Office of White House Counsel and the DOS Office of the Legal Adviser, concerning the Office of White House Counsel's review of agency records.

Ex. 23 (footnote omitted). The time period for CoA's FOIA request was "January 1, 2012 to the present." *Id.* CoA's FOIA request noted that CoA did "not seek access to the actual records that

were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).” *Id.*

59. By email dated November 26, 2013, DOS acknowledged that it had received CoA’s FOIA request. *See* Ex. 24.

60. More than eight months have passed since DOS received CoA’s FOIA request.

61. As of the date of this Complaint, DOS has not released a single responsive document or made a final determination as to CoA’s FOIA request.

**DOT - Failure to Produce Responsive Documents for 8 Months**

62. CoA submitted a FOIA request to DOT on November 26, 2013, seeking access to: records reflecting communications between (1) The Office of White House Counsel and the U.S. Department of Transportation (DOT) Departmental FOIA Office, and (2) The Office of White House Counsel and the DOT Office of the General Counsel, concerning the Office of White House Counsel’s review of agency records.

Ex. 25 (footnote omitted). The time period for CoA’s FOIA request was “January 1, 2012 to the present.” *Id.* CoA’s FOIA request noted that CoA did “not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).” *Id.*

63. By letter dated December 18, 2013, DOT acknowledged that it had received CoA’s FOIA request. *See* Ex. 26.

64. More than eight months have passed since DOT received CoA’s FOIA request.

65. As of the date of this Complaint, DOT has not released a single responsive document or made a final determination as to CoA’s FOIA request.

**DOTRES - Failure to Produce Responsive Documents for 3 Months**

66. CoA submitted a FOIA request to DOTRES on May 6, 2014, seeking access to:

records reflecting communications between (1) The Office of White House Counsel and the Department of the Treasury's (Treasury) Office of Disclosure Services, and (2) the Office of White House Counsel and the Treasury's Office of the General Counsel (including the Office of Chief Counsel for the Office of Financial Stability), concerning the Office of White House Counsel's review of agency records.

Ex. 27 (footnote omitted). The time period for CoA's FOIA request was "January 1, 2010 to January 1, 2013." *Id.* CoA's FOIA request noted that CoA did "not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails)." *Id.*

67. By letter dated May 7, 2014, DOTRES acknowledged that it received CoA's FOIA request. *See* Ex. 28.

68. More than three months have passed since DOTRES received CoA's FOIA request.

69. As of the date of this Complaint, DOTRES has not released a single responsive document or made a final determination as to CoA's FOIA request.

**VA - Failure to Produce Responsive Documents for 8 Months**

70. CoA submitted a FOIA request to the VA on November 26, 2013, seeking access to:

records reflecting all communications between (1) The Office of White House Counsel and the U.S. Department of Veterans Affairs (VA) Central FOIA Office, and (2) The Office of White House Counsel and the VA Office of the General Counsel, concerning the Office of White House Counsel's review of agency records.

Ex. 29 (footnote omitted). The time period for CoA's FOIA request was "January 1, 2012 to the present." *Id.* CoA's FOIA request noted that CoA did "not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails)." *Id.*

71. Nearly three months later, by letter dated February 21, 2014, the VA belatedly acknowledged that it had received CoA's FOIA request. *See* Ex. 30.

72. By letter dated June 20, 2014, the VA's Office of the Secretary informed CoA that it was unable to locate any records in its files that were responsive to CoA's FOIA request. *See* Ex. 31. It further informed CoA that the VA's Office of General Counsel was still searching for responsive records. *Id.*

73. Upon information and belief, more than eight months have passed since the VA received CoA's FOIA request.

74. As of the date of this Complaint, the VA has not released a single responsive document or made a final determination as to CoA's FOIA request.

**COUNT I**  
**(All Defendants)**

**Violation of FOIA: Failure to Comply with Statutory Deadlines**

75. Paragraphs 1 through 74 above are hereby incorporated by reference as if set forth fully herein.

76. FOIA requires agencies to respond to requests within twenty business days or, in "unusual circumstances," within thirty business days. 5 U.S.C. §§ 552(a)(6)(A)-(B). If additional time is needed by an agency, FOIA mandates that the agency *shall* provide the requestor "*an opportunity to arrange with the agency an alternative time frame* for processing the request[.]" *Id.* § 552(a)(6)(B)(ii) (emphasis added).

77. Each Defendant has improperly denied access to agency records requested by CoA by failing to make a determination as to CoA's FOIA request within the statutory time limit set forth in 5 U.S.C. §§ 552(a)(6)(A)-(B).

78. Moreover, each Defendant, without exception and almost as a matter of business practice, demanded time beyond the thirty business days provided under FOIA to make a determination as to CoA's FOIA request. In so doing, with one exception (DOJ/OIP), no Defendant complied with FOIA to work with CoA to "arrange . . . an alternative time frame[.]" See 5 U.S.C. § 552(a)(6)(B)(ii). Rather, with limited exception, the Defendants did not even notify CoA of the self-extensions (often multiple such self-extensions). Under the circumstances and given the language used in Defendants' letters, CoA did not believe that it had the ability to "arrange . . . an alternative time frame" with any Defendant.

79. CoA has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C) with respect to its FOIA request.

#### **RELIEF REQUESTED**

WHEREFORE, CoA respectfully requests and prays that this Court:

- a. order each of the Defendants to make a final determination and produce, within 30 days of the date of the Order, all records responsive to CoA's FOIA requests, respectively;
- b. award CoA its costs and reasonable attorney fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- c. grant such other relief as the Court may deem just and proper.

Dated: August 18, 2014

Respectfully submitted,

/s/ Prashant K. Khetan

Prashant K. Khetan

D.C. Bar No. 477636

prashant.khetan@causeofaction.org

/s/ Allan Blutstein

Allan Blutstein

D.C. Bar No. 486156

allan.blutstein@causeofaction.org

CAUSE OF ACTION

1919 Pennsylvania Avenue, NW, Suite 650

Washington, D.C. 20006

Telephone: (202) 499-4232

Facsimile: (202) 330-5842

*Counsel for Plaintiff,*

*Cause of Action*

# Exhibit 1



Cause of Action v. Internal Revenue Service, et al.

## Exhibit 2

Mr. Bertrand Tzeng  
May 29, 2013  
Page 2

Cause of Action gleans the information it regularly publishes in its newsletters from a wide variety of sources, including FOIA requests, government agencies, universities, law reviews and even other news sources. Cause of Action researches issues on government transparency and accountability, the use of taxpayer funds and social and economic freedom; regularly reports on this information; analyzes relevant data; evaluates the newsworthiness of the material; and puts the facts and issues into context. Cause of Action uses technology, including but not limited to the Internet, Twitter and Facebook, in order to publish and distribute news about current events and issues that are of current interest to the general public. These activities are hallmarks of publishing, news and journalism. As a result, federal government agencies have continually recognized Cause of Action as a representative of the media in connection with its FOIA requests.<sup>2</sup>

**Cause of Action Is Entitled to a Complete Waiver of Fees (Public-Interest Purpose)**

Cause of Action also requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). The FOIA provides that requested records shall be furnished without or at reduced charge 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.”<sup>3</sup> As discussed below, Cause of Action satisfies the statutory standard for a fee waiver.

*A. Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.*

As an initial matter, we note that “obtaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA.”<sup>4</sup> It is for this reason that Cause of Action seeks disclosure of the requested records. In this instance, the request meets the four-factor test used by the IRS to determine whether disclosure of the requested information is in the public interest.<sup>5</sup> First, the requested records concern identifiable “operations or activities of the government,”<sup>6</sup> specifically the IRS’s practice of referring certain documents to the White House for review prior to release. Second, the requested information is “likely to contribute”<sup>7</sup> to the understanding of the IRS’s operations because the information is not already in the public domain and the public is largely unaware of the subject matter. Third, disclosure will contribute to “public understanding,” as opposed to the understanding of the requester or a narrow segment of interested persons.<sup>8</sup> We note in this context that Cause of Action has both the intent and ability to make the results of this request available to the public in various medium forms. Our staff has a combined

<sup>2</sup> See, e.g., FOIA Request HQ-2013-00940-F, Dep’t of Energy (Apr. 26, 2013); FOIA Request 2013-034F, Consumer Fin. Prot. Bureau (Dec. 7, 2012); FOIA Request 2012-RMA-02563F, Dep’t of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep’t of Interior (Feb. 17, 2012); Dep’t of Commerce (Mar. 1, 2012); FOIA Request 2012-078, Dep’t of Homeland Sec. (Feb. 15, 2012); FOIA Request No. 12-00455-F, Dep’t of Educ. (Jan. 20, 2012).

<sup>3</sup> *Id.*

<sup>4</sup> *Balt. Sun v. U.S. Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001); see also *Ctr. to Prevent Handgun Violence v. U.S. Dep’t of the Treasury*, 981 F. Supp. 20, 24 (D.D.C. 1997) (“This self-appointed watchdog role is recognized in our system.”).

<sup>5</sup> See, e.g., 26 C.F.R. § 601.702(f)(2)(A)-(D) (outlining first four factors of IRS’s fee waiver regulation).

<sup>6</sup> § 601.702(f)(2)(A).

<sup>7</sup> § 601.702(f)(2)(B).

<sup>8</sup> § 601.702(f)(2)(C).

Cause of Action v. Internal Revenue Service, et al.

## Exhibit 3

You may file suit after July 18, 2013. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue  
Attention: CC:PA: Br 6/7  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call me at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13156-0087.

Sincerely,

  
Denise Higley  
Tax Law Specialist  
Badge No. 1000142331  
Headquarters (HQ) Disclosure FOIA Group



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY**  
**INTERNAL REVENUE SERVICE**  
**WASHINGTON, DC 20224**

August 13, 2013

Allan Blutstein  
Cause of Action  
1919 Pennsylvania Ave NW, Ste 650  
Washington, DC 20006

Dear Allan Blutstein:

I am responding to your Freedom of Information Act (FOIA) request dated May 29, 2013 that we received on June 5, 2013.

On June 25, 2013, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to process your request. I will contact you by September 27, 2013, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

We are granting your request to waive fees associated with this response.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13156-0087.

Sincerely,

Denise Higley  
Tax Law Specialist  
Headquarters (HQ) Disclosure Office



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY**  
**INTERNAL REVENUE SERVICE**  
**WASHINGTON, DC 20224**

December 10, 2013

Allan Blutstein  
Cause of Action  
1919 Pennsylvania Ave NW, Ste 650  
Washington, DC 20006

Dear Allan Blutstein:

I am responding to your Freedom of Information Act (FOIA) request dated May 29, 2013 that we received on June 5, 2013.

On September 23, 2013, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to process your request. I will contact you by March 20, 2014, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13156-0087.

Sincerely,

Denise Higley  
Tax Law Specialist  
Headquarters (HQ) Disclosure Office



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224**

June 17, 2014

Allan Blutstein  
Cause of Action  
1919 Pennsylvania Ave NW, Ste 650  
Washington, DC 20006

Dear Allan Blutstein:

I am responding to your Freedom of Information Act (FOIA) request dated May 29, 2013 that we received on June 5, 2013.

On March 18, 2014, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to process your request. I will contact you by September 19, 2014, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13156-0087.

Sincerely,

A handwritten signature in cursive script, appearing to read "Denise Higley".

Denise Higley  
Tax Law Specialist  
Headquarters (HQ) Disclosure Office



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

May 7, 2014

**VIA EMAIL**

Ms. Dionne Hardy  
FOIA Officer  
725 17th Street, NW, Room 9026  
Washington, D.C. 20503  
Email: OMBFOIA@omb.eop.gov

**RE: Freedom of Information Act Request**

Dear Ms. Hardy:

This letter is in response to your recent determination on Cause of Action's Freedom of Information (FOIA) request concerning the White House's review of agency records -- an opaque vetting process that has hindered public access to records across numerous federal agencies.<sup>1</sup> As discussed below, the Office of Management and Budget (OMB) demonstrably failed to locate a key document concerning this policy, thus necessitating a follow-up request.

In November 1993, the Department of Justice (DOJ) issued a memorandum advising federal agencies to consult with the Office of White House Counsel whenever White House-originated records were located in agency files in response to a FOIA request.<sup>2</sup> In an attempt to shed further light on this obscure policy, Cause of Action asked OMB on June 3, 2013, to produce all records since 1993 authored by the White House or DOJ concerning "the referral of agency documents to the White House in response to any document request, including but not limited to requests made pursuant to FOIA (e.g., subpoena, Congress, etc.)."<sup>3</sup>

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<sup>1</sup> See CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), available at <http://causeofaction.org/grading-government-white-house-targets-document-requesters/>; see also C.J. Ciaramella, Report: White House Review Hindering FOIA Releases, FREE BEACON (Mar. 21, 2014), <http://freebeacon.com/report-white-house-review-hindering-foia-releases/> (discussing Cause of Action's March 18, 2014 report); Aaron Stern, Report: Obama Administration Skirted FOIA from the Start, NEWSMAX (Mar. 20, 2014), <http://www.newsmax.com/newsfront/obama-foia-white-house-2009-memo/2014/03/20/id/560781/> (same); Mark Tapscott, 'Most Transparent' White House Ever Rewrote the FOIA to Suppress Politically Sensitive Docs, WASH. EXAMINER (Mar. 18, 2014), <http://washingtonexaminer.com/most-transparent-white-house-ever-rewrote-the-foia-to-suppress-politically-sensitive-docs/article/2545824> (same).

<sup>2</sup> Memorandum from Associate Attorney General Webster L. Hubbell to all Agency General Counsels (Nov. 3, 1993), available at <http://www.justice.gov/oip/foiaupdatesNoLXIV:3/page4.htm>. This policy appears to have commenced in 1988, according to documents obtained by Cause of Action through a FOIA request to DOJ. See Memorandum from Assistant Attorney General Stephen J. Markman to Freedom of Information Act/Privacy Act Legal and Administrative Contacts (Sept. 1, 1988) (attached as Exhibit 1).

<sup>3</sup> Letter from Cause of Action to Dionne Hardy, FOIA Officer, OMB (June 3, 2013) (attached as Exhibit 2).



Ms. Dionne Hardy  
May 7, 2014  
Page 3

Further, Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Cause of Action's staff members have a wealth of experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through Cause of Action's regularly published online newsletter, memoranda, reports, or press releases.<sup>10</sup> Indeed, Cause of Action has previously published a distinct work pertaining to the White House's review of agency records.<sup>11</sup>

Lastly, please note that Cause of Action is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code and does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding OMB's implementation of the Craig Memo.

#### **Request for news media status**

For fee purposes, Cause of Action also qualifies as a "representative of the news media" as defined by the statute. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Specifically, Cause of Action 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. *See id.*

Cause of Action gathers news that it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, and newsletters.<sup>12</sup> These distinct works are distributed to the through various media, including Cause of Action's website, which has been viewed just under 120,000 times in the past year alone.<sup>13</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via email.

The statutory definition of a "representative of the news media" unequivocally commands that organizations such as Cause of Action that electronically disseminate information and publications via "alternative media shall be considered to be news-media entities." 5 U.S.C. § 552(a)(4)(A)(ii)(II). In light of the foregoing, federal agencies have appropriately recognized Cause of Action's news media status in connection with its FOIA requests.<sup>14</sup>

<sup>10</sup> See <http://www.causeofaction.org>.

<sup>11</sup> See GRADING THE GOVERNMENT, *supra* note 1.

<sup>12</sup> See, e.g., GRADING THE GOVERNMENT, *supra* note 1; see also CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), available at <http://causeofaction.org/2013/09/23/greentech-automotive-a-venture-capitalized-by-chronism-2/>; see also CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), available at <http://causeofaction.org/2013/08/02/political-profiteering-how-forest-city-enterprises-makes-private-profits-at-the-expense-of-americas-taxpayers/>.

<sup>13</sup> Google Analytics for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>14</sup> See, e.g., FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013); FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 7, 2013); FOIA Request 2013-01234-F, Dep't of Energy (July 1, 2013, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA

# Exhibit 1

- 2 -

All inquiries to the White House on records whose origins cannot be discerned should be referred to the White House Counsel's Office at the following address:

Mr. Arthur B. Culvahouse, Jr.  
Counsel to the President  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Please note that many documents originating with the White House Press Office, such as "Press Briefings" and "White House Talking Points" (unless they are marked as drafts), are in the public domain and thus may be disclosed without consultation. Questions concerning documents likely in the public domain should also be referred to the White House Counsel's Office.

2. All records originating with other offices within the Executive Office of the President (EOP) must be referred to the proper EOP officer for consultation purposes only. Individual agencies should respond directly to the requester when these consultations have been completed. For your convenience, I am attaching a list of names and addresses of all other EOP components.

3. Classified White House records, or "sensitive" ones involving foreign relations matters, should be coordinated with Ms. Nancy V. Menan of the National Security Council at the following address:

Ms. Nancy V. Menan  
Acting Director, FOIA Unit  
National Security Council  
Old Executive Office Building  
Room 395  
Washington, D.C. 20506

If you have any questions with regard to these procedures, please do not hesitate to contact Miriam Nisbet, Deputy Director of the Office of Information and Privacy, Department of Justice, at 633-4233.

Attachment

## Exhibit 2

Ms. Dionne Hardy  
June 3, 2013  
Page 2

interested persons about actions of federal agencies, and another periodical, "Cause of Action News."<sup>2</sup>

Cause of Action gleans the information it regularly publishes in its newsletters from a wide variety of sources, including FOIA requests, government agencies, universities, law reviews and even other news sources. Cause of Action researches issues on government transparency and accountability, the use of taxpayer funds and social and economic freedom; regularly reports on this information; analyzes relevant data; evaluates the newsworthiness of the material; and puts the facts and issues into context. Cause of Action uses technology, including but not limited to the Internet, Twitter and Facebook, in order to publish and distribute news about current events and issues that are of current interest to the general public. These activities are hallmarks of publishing, news and journalism. As a result, federal agencies have continually recognized Cause of Action as a representative of the media in connection with its FOIA requests.<sup>3</sup>

If you have any questions about this request, please contact me by e-mail at [allan.blutstein@causeofaction.org](mailto:allan.blutstein@causeofaction.org) or by telephone at (202) 499-4232. Thank you for your attention to this matter.



Allan Blutstein  
Senior Counsel

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<sup>2</sup> Newsletters, Cause of Action, available at <http://causeofaction.org/newsletters/>.

<sup>3</sup> See, e.g., FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request HQ-2013-00940-F, Dep't of Energy (Apr. 26, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); Dep't of Commerce (Mar. 1, 2012); FOIA Request No. 12-00455-F, Dep't of Educ. (Jan. 20, 2012).



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

March 14, 2014


Mr. Allan Blutstein  
Senior Counsel  
Cause of Action  
1919 Pennsylvania Avenue NW  
Suite 650  
Washington, DC 20006

Dear Mr. Blutstein:

This responds to your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated June 3, 2013, which was received in this office on June 5, 2013, and assigned tracking number 2013-161. Your request seeks "... all subsequent memoranda authored by DOJ or the White House addressing the referral of agency documents to the White House in response to any document request, including but not limited to requests made pursuant to FOIA (e.g., subpoena, Congress, etc.)."

In response to your FOIA request, OMB conducted a search of its files for documents that are responsive to the request. We found 3 documents totaling 21 pages that are responsive. Those documents are enclosed.

Sincerely,

  
Dionne Hardy  
FOIA Officer

Enclosures

**Updated Standard Procedures for Making a Referral**

In the absence of a processing agreement, when an agency locates records which originated with another agency or component, the records should ordinarily be referred to the originating agency for processing and direct response to the requester. The following steps should be taken when making a referral of documents to another agency or component, subject to the exceptions described below regarding coordinating a response.

- Identify records appropriate for referral to other agencies or components as soon as practicable during the course of processing a request.
- Prior to making the referral, review the records for any equity your agency may have and include your agency's disclosure recommendations in the referral memorandum. That will facilitate the processing of the referral by the receiving agency.
- Send the documents, with the accompanying memorandum containing your agency's disclosure recommendations, to the originating agency or agencies as soon as practicable during the course of your processing.
- Include in the referral package the FOIA request number assigned by your agency. That original FOIA request number should always accompany any communication concerning the referred documents. Also include a copy of the FOIA request.
- Provide the date the request giving rise to the referral was received by your agency. That will allow the agency receiving the referral to place the records in any queue according to that request receipt date.
- Advise the FOIA requester that a referral of records has been made, provide the name of the agency to which the referral was directed, and include that agency's FOIA contact information.
- Maintain a copy of the records being referred and the cover memorandum accompanying the referral.

These steps serve several overlapping purposes. They make the referral process transparent; they maximize administrative efficiency; and they facilitate tracking of the referred documents. By identifying the agencies to which referrals were directed and by maintaining the original FOIA request number on any communication concerning the referred documents, the requester will be able to readily match the documents released as a result of the referral with the original request.

**Standard Procedures Upon Receipt of a Referral**

When an agency receives a referral of documents from another agency or another component, the following steps should be taken to ensure efficiency and accountability.

- Assign your own agency's tracking number to the referral so that you can readily track it.
- Send the FOIA requester an acknowledgment of receipt of the referral and identify the agency that made the referral, subject to the exceptions described below for coordinating a response.
- Include in the acknowledgement both your agency's tracking number and the original FOIA request tracking number assigned by the agency making the referral so that the requester can readily link the referred records to his or her original request.
- Provide the FOIA requester with a telephone line or internet service that can be used to obtain information about the status of the referred records.
- Track the referral just as you would an incoming request and include it in your Annual FOIA Report.
- Place the documents that make up the referral in the appropriate processing track at your agency according to the date the FOIA request was first received by the agency making the referral, and not according to the date the referral was received by your agency. In that way, the FOIA requester does not incur any timing disadvantage by virtue of the fact that a referral was made.

- If the agency that originated the records advises that there are no privacy or national security harms at risk by virtue of their involvement, then the standard referral procedures outlined above can be followed. In those cases, the agency receiving the referral will respond directly to the requester according to the standard referral process.
- Otherwise, the agency originally in receipt of the request should coordinate with the agency that originated the records to determine how the records should be handled under the FOIA.
- The agency that originated the records and whose views are being sought through the coordination should assign a tracking number to the documents that are the subject of the coordination and should account for their handling in its Annual FOIA Report.
- During the time the agency originally in receipt of the request is coordinating with the other agency, the agency originally in receipt of the request shall respond to status inquiries made by the requester.
- The agency that originated the documents and whose views are being sought is responsible, upon request, for promptly providing updated status information to the agency originally in receipt of the request. That agency shall work proactively with the receiving agency to ensure that the processing of the request is conducted efficiently and that the requester is not disadvantaged as a result of the coordination process. Moreover, to preserve the privacy and law enforcement interests at stake, the originating agency should promptly provide its views on the records so that they can be readily incorporated into the receiving agency's response letter.
- The release determination for the records that are the subject of the coordination should be conveyed to the requester by the agency originally in receipt of the request.

As with standard referrals, these procedures for coordinating a response serve several overlapping purposes. They ensure that an individual's privacy is not inadvertently invaded or a national security interest in a topic is not inadvertently compromised through the mechanics of the referral process. At the same time, they facilitate the handling of, and promote accountability for, the records that are the subject of the coordination. Lastly, they ensure that the FOIA requester retains a point of contact for the documents subject to the coordination who can provide information regarding the status of the request.

### **Consultations**

There are several situations where it is appropriate for agencies to consult with another agency or entity which holds an interest in the documents that are the subject of a FOIA request. This most commonly arises when an agency locates records in response to a request that originated with the agency, but which contain within them information of interest to another agency or another component. In those situations, the agency processing the request should consult with that other agency, or equity holder, to obtain its views prior to disclosure of the records.

Consultations, rather than referrals, are also appropriate when an agency locates records in its files that originated with an entity that is not itself subject to the FOIA. The agency may consult with that outside entity as part of its process of making a disclosure determination. Such consultations are required by Executive Order 12,600 whenever an agency is processing a request for records that arguably contain material exempt from release under Exemption 4 of the FOIA. See 3 C.F.R. 235 (1988). Pursuant to Executive Order 12,600, agencies are required, with certain limited exceptions, to establish procedures to consult with the submitter of such records in order to obtain the submitter's views prior to making a disclosure determination. See Exec. Order No. 12,600, § 1. As part of those procedures, Executive Order 12,600 specifically requires that agencies notify requesters to advise them that they are seeking the views of the submitter on documents sought by the requester. See *id.* § 9.

As mentioned above, agencies are encouraged to establish agreements to eliminate the need for consultations on regularly occurring information in their files. Agencies should also set up mechanisms to facilitate prompt responses to consultations. These can range from establishment of dedicated points of contact for certain information to utilization of shared document platforms by agencies which frequently need to consult with one another.

### **Procedures for Making a Consultation**

When consulting with another agency to obtain its views on disclosure, agencies should take the following steps.



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### Referrals, Consultations, and Coordination

#### Procedures for Processing Records When Another Agency or Entity Has an Interest in Them

In the course of processing records responsive to FOIA requests, it is not uncommon for agencies to locate records which either originated with another agency, or another component within their agency, or which contain information that is of interest to another agency or component. The long-standing practice in such situations is to either refer the requested record to the originating agency or component for it to process, or to consult with the other agency or component that has equity in the document to get its views on the sensitivity of the document's content prior to making a disclosure determination. Typically, agencies refer records for direct handling to another agency when the records originated with that other agency. By contrast, when records originated with the agency processing the request, but contain within them information of interest to another agency, the agency processing the request will typically consult with that other agency prior to making a release determination.

There are several benefits to these procedures. They foster efficiency and ensure consistency of responses. They also help ensure that agencies making release determinations are fully informed about any sensitivities of the content of the document. While referrals and consultations are widely utilized and accepted, see, e.g., *Burstein v. U.S. Air Force*, 494 F.2d 1106, 1109 (D.C. Cir. 2007), it is important that agencies remain cognizant of the importance of keeping requesters informed so that they understand what has happened to the documents that are responsive to their requests, that they are not disadvantaged by the referral and consultation process, and that they have a point of contact at the relevant agency where they can make inquiries about the status of their requests, including the status of any records that have been referred.

The updated procedures for referrals and consultations that are utilized below are designed to address all these important interests. They set forth the general rules agencies should follow both in making referrals and consultations and in handling any such referrals and consultations sent to them. They also address the exceptional cases where there is a need to protect personal privacy or national security interests and so constitute, as described below, rather than the standard referral procedures, should be used. Lastly, the procedures are designed to maintain efficiency and ensure agency accountability for the overall benefits of FOIA administration.

### Threshold Considerations

There are a few threshold considerations that must be taken into account prior to making a referral or consultation. First, while the typical practice should be to refer records when they originated with another agency, if the requester justifiably argues that the records can be handled as a consultation, that is permissible. Ultimately, the agency in the best position to respond regarding the records should do so. Typically that is the originator of the records, but that is not universally always the case.

Second, before making a referral of records to another agency or component for handling and direct responses to the requester, agencies must be sure that the entity that will receive the referral is itself subject to the FOIA. It is not appropriate to refer records for direct response to the FOIA requester if the entity that originated the records is not itself subject to the FOIA. See *EPIC v. NIA*, No. 10-cv-006, 2011 WL 563606, at \*2 (D.D.C. July 2, 2011) (holding that while "It is true that agencies that receive FOIA requests and discover responsive documents that were created by another agency (they) may forward, or 'refer' those documents to the originating agency, if the originating entity is not an agency subject to the FOIA, it cannot unilaterally be made subject to the statute by any action of an agency, including referral"). Thus, a referral should not be made to Congress, the courts, state governmental entities, private businesses, or individuals. As discussed below, an agency may consult with such entities as necessary, but the agency must then make a disclosure determination and respond itself concerning those documents.

Third, when agencies find that they routinely locate the same or similar types of documents or information that originated with another agency, or when agencies find that they routinely receive for consultation or referral the same type of record or information from another agency, they should look for ways to collaborate to see if they can adopt standard processing procedures with regard to the documents or information that relate to the number of referrals or consultations that need to be made. This, in turn, will improve overall processing times both for the agency which otherwise would have made the referral or consultation and the agency that otherwise would have received the referral or consultation.

### Updated Standard Procedures for Making a Referral

In the absence of a processing agreement, when an agency locates records which originated with another agency or component, the records should ordinarily be referred to the originating agency for processing and direct responses to the requester. The following steps should be taken when making a referral of documents to another agency or component, subject to the exceptions described below regarding continuing a response.

- Identify records appropriate for referral to other agencies or components as soon as practicable during the course of processing a request.
- Prior to making the referral, review the records for any equity your agency may have and include your agency's disclosure recommendations in the referral memorandum. That will facilitate the processing of the referral by the receiving agency.
- Send the documents, with the accompanying memorandum containing your agency's disclosure recommendations, to the originating agency or agencies as soon as practicable during the course of your processing.
- Include in the referral package the FOIA request number assigned by your agency. That original FOIA request number should always accompany any communication concerning the referred document. Also include a copy of the FOIA request.
- Provide the date the request giving rise to the referral was received by your agency. That will allow the agency receiving the referral to place the records in any queue according to that request receipt date.
- Advise the FOIA requester that a referral of records has been made, provide the name of the agency to which the

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- Otherwise, the agency originally in receipt of the request should coordinate with the agency that originated the records to determine how the records should be handled under the FOIA.
- The agency that originated the records and whom views are being sought through the coordination should assign a tracking number to the documents that are the subject of the coordination and deposit records for their handling in its Annual FOIA Report.
- During the time the agency originally in receipt of the request is coordinating with the other agency, the agency originally in receipt of the request shall respond to status inquiries made by the requester.
- The agency that originated the documents and whose views are being sought is responsible, upon request, for promptly providing updated status information to the agency originally in receipt of the request. That agency shall work proactively with the receiving agency to ensure that the processing of the request is conducted efficiently and that the requester is not disadvantaged as a result of the coordination process. Moreover, to preserve the privacy and law enforcement interests at issue, the originating agency should promptly provide its views on the records so that they can be readily incorporated into the receiving agency's response letter.
- The release determination for the records that are the subject of the coordination should be conveyed to the requester by the agency originally in receipt of the request.

As with standard referrals, these procedures for coordinating a response serve several overlapping purposes. They ensure that no individual's privacy is not inadvertently harmed or a national security interest to a single is not inadvertently compromised through the mechanics of the referral process. At the same time, they facilitate the handling of and preserve accountability for the records that are the subject of the coordination. Lastly, they ensure that the FOIA requester receives a point of contact for the documents subject to the coordination who can provide information regarding the status of the request.

#### Coordination

There are several situations where it is appropriate for agencies to consult with another agency or entity which holds an interest in the documents that are the subject of a FOIA request. This most commonly arises when an agency locates records in response to a request that originated with the agency, but which involves within their information of interest to another agency or another component. In those situations, the agency processing the request should consult with that other agency, or entity holder, to obtain its views prior to disclosure of the records.

Coordination, rather than referral, are also appropriate when an agency locates records in its files that originated with an entity that is not itself subject to the FOIA. The agency may consult with that outside entity as part of its process of making a disclosure determination. Such consultations are required by Executive Order 13,600 whenever an agency is processing a request for records that regularly contain material exempt from release under Executive Order 13,600. See 3 C.F.R. 255 (1980). Pursuant to Executive Order 13,600, agencies are required, with certain limited exceptions, to establish procedures to consult with the submitter of such records in order to obtain the submitter's views prior to making a disclosure determination. See Exec. Order No. 13,600, § 1. As part of those procedures, Executive Order 13,600 specifically requires that agencies notify requesters to advise them that they are seeking the views of the submitter on documents sought by the requester. See *id.* § 9.

As mentioned above, agencies are encouraged to establish agreements to absorb the need for consultations on regularly occurring information in their files. Agencies should also set up mechanisms to facilitate prompt responses to consultations. These can range from establishment of dedicated points of contact for certain information to reliance on shared document platforms by agencies which frequently need to consult with one another.

#### Procedures for Making a Consultation

When consulting with another agency to obtain its views on disclosure, agencies should take the following steps.

- Unless the more time-efficient mechanism in conducting the consultation. For example, in certain situations a phone call or e-mail to the agency whose views are being sought may be all that is required.
- For consultations regarding a more extensive review for the other agency, provide copies of the documents at issue, a copy of the request letter, and any other information that may assist the other agency in its analysis.
- Conduct consultations diplomatically, rather than aggressively, whenever possible, to ensure greater efficiency.
- When doing so, advise the receiving agency of the other agencies that are also reviewing the documents.
- When providing updates to requesters on the status of their requests, include information concerning ongoing consultations. Ordinarily, with the same exceptions noted above in the section on coordinating responses, the identity of the entity which is being consulted can be provided to the requester.

#### Procedures Upon Receipt of a Consultation

Whenever an agency receives a consultation from another agency, it should be mindful of the need to respond as promptly as practicable to the consultation to facilitate the other agency's ability to finish its response to the request. To ensure greater accountability for the handling of consultations the Department of Justice created a requirement that agencies include data in their Annual FOIA Reports each year regarding any consultations that they receive. Agencies must report in Section III of their Annual FOIA Reports the number of consultations received, the number processed, and the number of consultations remaining pending at the end of the fiscal year, including the dates the two oldest pending consults were received and the number of days those two oldest consultations have been pending.

Upon receipt of a consultation, agencies should take the following steps.

- Assign the consultation a tracking number to facilitate its handling and inclusion in your Annual FOIA Report.
- Promptly provide your agency's views on the disclosure of the contents of the records to the agency seeking the consultation. Utilize the most time-efficient method in doing so.
- Considerately assess the need and frequency of the consultations you receive so that you can identify ways to streamline or eliminate the need for certain consultations.

#### Considerations

When processing records in response to FOIA requests, agencies often locate records or information that originated outside their agencies. By utilizing the referral, coordination, and consultation procedures outlined above, agencies can make certain that they are appropriately handling the records. These procedures ensure that agencies are making fully informed and consistent disclosure determinations, in a manner that maximizes efficiency. They also ensure that FOIA requesters understand how their requests are being handled and always have a point of contact to obtain information about the status of any of the records subject to their requests.

*Updated: August 2014*

FOIA Update, Summer/Fall 1993

[http://www.usdoj.gov/oip/foia\\_updates/Vol XIV 3/page1.htm](http://www.usdoj.gov/oip/foia_updates/Vol_XIV_3/page1.htm)

## **THE WHITE HOUSE**

October 4, 1993

### **MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES**

#### **SUBJECT: The Freedom of Information Act**

I am writing to call your attention to a subject that is of great importance to the American public and to all Federal departments and agencies – the administration of the Freedom of Information Act, as amended (the "Act"). The Act is a vital part of the participatory system of government. I am committed to enhancing its effectiveness in my Administration.

For more than a quarter century now, the Freedom of Information Act has played a unique role in strengthening our democratic form of government. The statute was enacted based upon the fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their government the better they will be governed. Openness in government is essential to accountability and the Act has become an integral part of that process.

The Freedom of Information Act, moreover, has been one of the primary means by which members of the public inform themselves about their government. As Vice President Gore made clear in the National Performance Review, the American people are the Federal Government's customers. Federal departments and agencies should handle requests for information in a customer-friendly manner. The use of the Act by ordinary citizens is not complicated, nor should it be. The existence of unnecessary bureaucratic hurdles has no place in its implementation.

I therefore call upon all Federal departments and agencies to renew their commitment to the Freedom of Information Act, to its underlying principles of government openness, and to its sound administration. This is an appropriate time for all agencies to take a fresh look at their administration of the Act, to reduce backlogs of Freedom of Information Act requests, and to conform agency practice to the new litigation guidance issued by the Attorney General, which is attached.

Further, I remind agencies that our commitment to openness requires more than merely responding to requests from the public. Each agency has a responsibility to distribute information on its own initiative, and to enhance public access through the use of electronic information systems. Taking these steps will ensure compliance with both the letter and spirit of the Act.

Review." Envisioned is a comprehensive review of all standard FOIA forms and correspondence utilized by the Justice Department's various components. These items will be reviewed for their correctness, completeness, consistency, and particularly for their use of clear language. As we conduct this review, we will be especially mindful that FOIA requesters are users of a government service, participants in an administrative process, and constituents of our democratic society. I encourage you to do likewise at your departments and agencies.

Finally, I would like to take this opportunity to raise with you the longstanding problem of administrative backlog under the Freedom of Information Act. Many Federal departments and agencies are often unable to meet the Act's ten-day time limit for processing FOIA requests, and some agencies — especially those dealing with high-volume demands for particularly sensitive records — maintain large FOIA backlogs greatly exceeding the mandated time period. The reasons for this may vary, but principally it appears to be a problem of too few resources in the face of too heavy a workload. This is a serious problem — one of growing concern and frustration to both FOIA requesters and Congress, and to agency FOIA officers as well.

It is my hope that we can work constructively together, with Congress and the FOIA-requester community, to reduce backlogs during the coming year. To ensure that we have a clear and current understanding of the situation, I am requesting that each of you send to the Department's Office of Information and Privacy a copy of your agency's Annual FOIA Report to Congress for 1992. Please include with this report a letter describing the extent of any present FOIA backlog, FOIA staffing difficulties and any other observations in this regard that you believe would be helpful.

In closing, I want to reemphasize the importance of our cooperative efforts in this area. The American public's understanding of the workings of its government is a cornerstone of our democracy. The Department of Justice stands prepared to assist all Federal agencies as we make government throughout the executive branch more open, more responsive, and more accountable.

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*The following is the full text of a memorandum recently sent by Attorney General Janet Reno to the heads of all individual components of the Department of Justice, as a follow-up to the Attorney General's FOIA Memorandum, on the subject of FOIA backlog reduction within the Department:*

Last month, President Clinton and I issued new Freedom of Information Act policy memoranda to the heads of all Federal departments and agencies (copies attached), as part of our Openness in Government Initiative. Our policy calls for a strong presumption of disclosure under the FOIA, with information withheld only where it need be withheld in order to prevent foreseeable harm under an applicable FOIA exemption. This applies to law enforcement agencies such as the Department of Justice as well as to other Federal agencies. We are strongly encouraging all Federal agencies to make discretionary FOIA disclosures whenever this standard is not met, and we will decide whether to defend FOIA cases in litigation according to this higher standard as well. Additionally, we are committed to reducing FOIA backlogs as quickly as possible.

These backlog-reduction efforts are now actively underway within the Department, but they need your strong support as well. We all should recognize that there is no single solution to this longstanding problem. Obviously, the allocation of additional resources to FOIA administration and the reallocation of existing resources are among the choices to be considered. We also should redouble our efforts to employ practices and procedures of FOIA administration that make the most cost-effective use of all resources available.

Equally important, I believe, is the institutional attitude that is brought to matters of day-to-day FOIA administration. To implement the meaningful change in FOIA policy we announced last month, we must depend not only on those directly involved in that activity on a daily basis, but also the many Department employees on whom FOIA officers depend for timely assistance. In many instances, the Department's FOIA officers simply cannot function without the cooperation of the custodians of requested records and other interested program personnel within each component. They, too, must make timely FOIA compliance a greater priority in the future.

Please note that many records originating with the White House Press Office, such as "Press Briefings" and "White House Talking Points" (unless they are marked as, or appear to be, drafts), are in the public domain and thus may be disclosed without consultation. Questions concerning records likely to be in the public domain should be referred to the White House Counsel's Office as well.

It is possible that a record originating in the White House Office (or in the Office of the Vice President—see below) will be one over which the White House Office (or the Office of the Vice President) has retained control, in which case it will not be an "agency record" subject to the FOIA even though it is located by a federal agency in response to a FOIA request. Accord, e.g., Goland v. CIA, 607 F.2d 339, 345-48 (D.C. Cir. 1978) (honoring "retention of control" by non-FOIA entity), cert. denied, 445 U.S. 927 (1980); see also Paisley v. CIA, 712 F.2d 888, 892-95 (D.C. Cir. 1983); Holy Spirit Ass'n v. CIA, 836 F.2d 838, 840-42 (D.C. Cir. 1987). Any such records should be identified for special handling.

2. Any record originating with the Office of the Vice President or any of its component offices, offices which likewise are not subject to the FOIA, should be forwarded for consultation purposes to the Office of the Counsel to the Vice President, Old Executive Office Building, Room 289, Washington, D.C. 20501.
3. All records originating with other offices within the Executive Office of the President (EOP)—including the Office of Administration; the Office of Management and Budget; the Office of Science, Technology and Space Policy; the Office of the U.S. Trade Representative; the Council on Environmental Quality; and the Office of National Drug Control Policy—should be forwarded to the FOIA officers of the relevant individual EOP offices. This, again, is for consultation purposes only; agencies remain responsible for responding directly to the FOIA requester once these EOP consultations have been completed. For your convenience, a contact list for these EOP offices is attached.
4. Responses to FOIA requests for any classified White House records or records originating with the National Security Council should be coordinated with Ms. Nancy V. Menan of the National Security Council at the following address:

Director of Information Disclosure  
Office of Information Disclosure  
National Security Council  
Old Executive Office Building, Room 392  
Washington, D.C. 20508

Records originating with the Assistant to the President for National Security Affairs or his deputy should continue to be treated as records originating in the White House Office (see footnote 3 above).

If any question arises regarding these procedures, either generally or in any particular case, please do not hesitate to contact Margaret Ann Irving, Acting Deputy Director of the Justice Department's Office of Information and Privacy, at (202) 514-4251.

Attachment

cc: All Agency General Counsels

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#### Notes

1. This memorandum supersedes the Department of Justice's January 28, 1992 memorandum on this subject.
2. See FOIA Update, Summer 1991, at 3-4 ("OIP Guidance: Referral and Consultation Procedures") (further discussing differences between these two procedures).
3. The "White House Office" includes, among other components, the Offices of the President, Cabinet Affairs, Chief of Staff, Communications, First Lady, Counsel to the President, Intergovernmental Affairs, Legislative



**Department of Justice Guide to the Freedom of Information Act**

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## **Introduction**

Enacted on July 4, 1966, and taking effect on one year later, the Freedom of Information Act provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that any portions of such records are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.<sup>1</sup> The FOIA thus established a statutory right of public access to Executive Branch information in the federal government.<sup>2</sup>

The United States Supreme Court has explained that "[t]he basic purpose of [the] FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."<sup>3</sup> The "FOIA is often explained as a means for citizens to know 'what their Government is up to.'"<sup>4</sup> The Supreme Court stressed that "[t]his phrase should not be dismissed as a convenient formalism."<sup>5</sup> Rather, "[i]t defines a structural necessity in a real democracy."<sup>6</sup> As President Obama has declared, "[a] democracy requires

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<sup>1</sup> 5 U.S.C. § 552 (2006 & Supp. IV 2010).

<sup>2</sup> See *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 150 (1989) ("This Court repeatedly has stressed the fundamental principle of public access to Government documents that animates the FOIA.").

<sup>3</sup> *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

<sup>4</sup> *NARA v. Favish*, 541 U.S. 157, 171-72 (2004) (quoting *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)).

<sup>5</sup> *Id.* at 172.

<sup>6</sup> *Id.*

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practice, an agency should consult with any other agency or agency component whose information appears in the responsive records, especially if that other agency or component is better able to determine whether the information is exempt from disclosure.<sup>213</sup> The Department of Justice has issued detailed guidance for agencies to follow when consulting with other entities.<sup>214</sup>

When an agency locates records that originated with another agency or component, as a matter of sound administrative practice it should ordinarily refer those records to their originator so that that agency can make a direct response to the requester on those records.<sup>215</sup> The referring agency ordinarily should advise the requester of the referral and of the name of the agency FOIA office to which it was made.<sup>216</sup>

In Sussman v. U.S. Marshals Service, the Court of Appeals for the District of Columbia Circuit ruled that although consultations are the only procedure expressly mentioned in the FOIA to address situations where another agency has an interest in the handling of requested records, it was permissible for agencies to refer records to their originator for direct response to the requester.<sup>217</sup> The D.C. Circuit found that referring documents for direct response is a reasonable procedure so long as it does not "lead to improper withholding."<sup>218</sup> Additionally, the Department of Justice's guidance on referrals advises agencies not to refer records to an entity that is not itself subject to the FOIA.<sup>219</sup>

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<sup>213</sup> See DOJ, OIP Guidance: Referrals, Consultations, and Coordination: Procedures for Processing Records when Another Agency or Entity Has an Interest in Them (2011); cf. DOJ FOIA Regulations, 28 C.F.R. § 16.4(c)(1) (2012).

<sup>214</sup> DOJ, OIP Guidance: Referrals, Consultations, and Coordination: Procedures for Processing Records when Another Agency or Entity Has an Interest in Them (2011) (advising that agencies should utilize time-efficient mechanisms in conducting consultations, should provide copies of material that would assist other agency in its analysis, should conduct consultations simultaneously rather than sequentially whenever possible, and should provide requesters updates on status of ongoing consultations).

<sup>215</sup> See id. (explaining that referrals foster efficiency and ensure consistency of responses, as well as ensure that agencies making release determinations are fully informed about the content of the records).

<sup>216</sup> See id. (explaining that providing this information ensures that requesters understand what has happened to the documents that are responsive to their requests, are not disadvantaged by the referral process, and have a point of contact should they have any questions about their request).

<sup>217</sup> 494 F.3d 1106, 1118 (D.C. Cir. 2007) (quoting McGehee v. CIA, 697 F.2d 1095, 1110 (D.C. Cir. 1983) and holding that "McGehee's admonition that the agency receiving the initial request 'cannot simply refuse to act on the ground that the documents originated elsewhere . . . imposes a duty on that agency, but the agency may acquit itself through a referral, provided the referral does not lead to improper withholding'").

<sup>218</sup> Id.; see also Inst. for Poly Stud. v. CIA, 885 F. Supp 2d 120, 241 (D.D.C. 2012) (citing Sussman, 494 F.3d at 1108, and upholding referral, noting that "[o]nce defendant

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records if the matter proceeds to litigation,<sup>221</sup> which is typically done by submitting a declaration from the agency which processed the referral.<sup>222</sup> Additionally, as a matter of sound administrative practice agencies receiving referrals should handle them on a "first-in, first-out" basis among their other FOIA requests, according to the date of the request's initial receipt at the referring agency in order to avoid placing requesters at an unfair timing disadvantage through agency referral practices.<sup>223</sup>

Although a court has found that an agency generally is under no obligation to "forward" a request (which is distinct from "referring" records) to any other agency which might maintain records,<sup>224</sup> an agency has been found required to do so, when it obligated itself to through its own FOIA regulations.<sup>225</sup> As a matter of administrative discretion, an

<sup>221</sup> See, e.g., Hall v. CIA, 668 F. Supp. 2d 172, 182 (D.D.C. 2010) (instructing agency to "take affirmative steps to ensure that its referrals are being processed"); Skinner v. DOJ, 744 F. Supp. 2d 185, 216 (D.D.C. 2010) (denying summary judgment in part "[b]ecause the results of the [agency's] referral of records to [two agencies] have not been explained"); Schoenman v. FBI, 604 F. Supp. 2d 174, 203-04 (D.D.C. 2009) (requiring agency to submit a "comprehensive" Vaughn Index that will include "a complete accounting of all referrals made and indicate whether all documents so referred have been processed and released to Plaintiff"); Keys, 570 F. Supp. 2d at 68-69 (stating that withholding was improper where neither referring agency nor referee agency explained nature of pages withheld on referral, and where referring agency did not explain why referee agency required requester to submit additional request for responsive public records); Hronek v. DEA, 16 F. Supp. 2d 1260, 1272 (D. Or. 1998) (noting that with respect to records referred to nonparty agencies "the ultimate responsibility for a full response lies with the [referring] agencies"), aff'd, 7 F. App'x 591 (9th Cir. 2001).

<sup>222</sup> See, e.g., Hall v. CIA, No 04-814, 2012 WL 3143839, at \*6 (D.D.C. Aug. 3, 2012) (concluding that agency "fulfilled its burden as to the coordination" of certain documents where it processed its own responsive records and provided "supporting declarations from the coordinating agencies").

<sup>223</sup> See DOJ, OIP Guidance: Referrals, Consultations, and Coordination: Procedures for Processing Records when Another Agency or Entity Has an Interest in Them (2011) (agency should order referral according to date FOIA request was first received by agency making referral, not according to date referral itself was received by agency); cf. Williams v. United States, 932 F. Supp. 354, 357 & n.7 (D.D.C. 1996) (urging agency to set up an "express lane" for referred records so as to not "tie up other agencies by taking an inordinate period of time to review referred records [and] unnecessarily inhibit[ing] the smooth functioning of the [other] agencies' well oiled FOIA processing systems").

<sup>224</sup> See Hardy v. DOD, No. 99-523, 2001 WL 34354945, at \*10 (D. Ariz. Aug. 27, 2001) (holding that an agency was not obligated to forward to OPM a FOIA request for personnel records that agency did not maintain itself).

<sup>225</sup> See Truesdale v. DOJ, 731 F. Supp. 2d 3, 6-8 (D.D.C. 2010) (denying in part defendant's motion for summary judgment because agency did not demonstrate compliance with own FOIA regulations concerning referrals).



## Exhibit 4

## Exhibit 5

1. [REDACTED], a POLITICO reporter, submitted two broad FOIA requests to OMB on July. We have learned that many other agencies besides OMB may have received similar requests.

-- The first request asks for, roughly speaking, all emails and correspondence between a long list of media outlets and OMB regarding questions by the media and the responses by agency employees and officials. The request also encompasses communications between OMB and the White House Press Office regarding any media organizations or their officials.

-- The second request asks for all ethics waivers granted to all political appointees, letters of recusal and related matters, and specifically includes any and all communications received from or sent to the White House Counsel's office concerning the same. The request appears to be seeking waivers concerning the President's Executive Order on Ethics.

In response to our questions about the breadth and burdensomeness of the first request, the version of POLITICO's first request to OMB has narrowed considerably, and may narrow some more. Moreover, we are working to ensure that the second request does not result in the production of attorney-client or other privileged communications. In both cases, we will work with the WH Counsel's office to ensure that WH-related documents are produced only in coordination with WH Counsel's advance review.

2. We are happy to compare notes with you in responding to the requests.
3. Moreover, as a reminder, to the extent that these requests implicate documents with White House equities, agency GC offices should consult in advance with White House Counsel, consistent with the memorandum sent by White House Counsel to all agencies. Agencies can contact their usual White House Counsel point of contact or Blake Roberts [REDACTED]

Preeti D. Bansal  
OMB General Counsel and Senior Policy Advisor  
[REDACTED]

**From:** FN-OMB-FOIA  
**To:** Moira Smith  
**Subject:** RE: FOIA Request from Cause of Action  
**Date:** Wednesday, May 14, 2014 10:28:21 AM

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Good Morning:

This email acknowledges receipt of your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated May 7, 2014, which was received in OMB's FOIA office on May 9, 2014. Your request has been logged in and is being processed. For your reference, the OMB FOIA number is 14-104.

Sincerely,  
Dionne Hardy

**From:** Moira Smith [mailto:moira.smith@causeofaction.org]  
**Sent:** Wednesday, May 07, 2014 10:07 AM  
**To:** FN-OMB-FOIA  
**Subject:** FOIA Request from Cause of Action

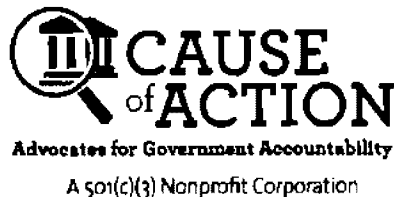
Attached is a FOIA request from Cause of Action.

Thank you.

Moira Smith | Cause of Action  
1919 Pennsylvania Ave, NW  
Suite 650  
Washington, D.C. 20006  
202-417-3577  
[Moira.Smith@causeofaction.org](mailto:Moira.Smith@causeofaction.org)

Confidentiality:

~~The information contained in, and attached to, this communication may be confidential, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.~~



August 9, 2013

**VIA FACSIMILE**

Mr. Paul Jacobsmeyer  
Office of the Secretary of Defense and Joint Staff  
FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington, D.C. 20301-1155  
Facsimile: (571) 372-0500

Dear Mr. Jacobsmeyer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests access to the following records:

All communications between the Office of White House Counsel and OSD/JS FOIA personnel or the Department of Defense (DoD) Office of General Counsel concerning the Office of White House Counsel's review of DoD records. The time period for this request is August 2011 to the present.

Please note that we do not seek access to the actual documents forwarded to the Office of White House Counsel for review, but only to the records that establish that such consultations occurred (for example, cover e-mails).

**Request for news media status**

For fee purposes, Cause of Action qualifies as a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii)(II). Cause of Action is organized and operated, among other things, to publish and broadcast news, *i.e.*, information that is about current events or that would be of current interest to the public. Cause of Action gleans the information that it regularly publishes from a wide variety of sources and methods, including whistleblowers/insiders, government agencies, universities, scholarly works, and FOIA requests. Cause of Action routinely and systematically disseminates information acquired from such sources to the public through various media. For example, Cause of Action maintains a frequently visited website, [www.causeofaction.org](http://www.causeofaction.org), where it distribute its articles, blog posts, published reports, and newsletters, all of which address current events that are of interest to the general public. Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail. As a result

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## Exhibit 8

Cause of Action v. Internal Revenue Service, et al.

## Exhibit 9

Mr. Alexander Morris  
June 26, 2013  
Page 2

from various government entities. Cause of Action produces another newsletter titled "Agency Check," which informs interested persons about actions of federal agencies, and another periodical, "Cause of Action News."<sup>1</sup> Finally, Cause of Action also disseminates its information via Twitter and Facebook. These activities are hallmarks of publishing, news and journalism. As a result, federal agencies have continually recognized Cause of Action as a representative of the media in connection with its FOIA requests.<sup>2</sup>

### **Cause of Action Is Entitled to a Public Interest Fee Waiver**

Cause of Action also requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), which provides that requested records shall be furnished without or at reduced charge 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." As discussed below, Cause of Action satisfies the statutory standard for a fee waiver.

#### *A. Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.*

As an initial matter, we note that "obtaining information to act as a 'watchdog' of the government is a well-recognized public interest in the FOIA."<sup>3</sup> It is for this reason that Cause of Action seeks disclosure of the requested records. In this instance, the request meets the four-factor test used by DOE to determine whether disclosure of the requested information is in the public interest.<sup>4</sup> First, the requested records concern identifiable "operations or activities of the government,"<sup>5</sup> namely DOE's practice of referring certain documents to the White House for review prior to release. Second, the requested information is "likely to contribute"<sup>6</sup> to the understanding of DOE's operations because the information is not already in the public domain and the public is largely unaware of the subject matter. Third, disclosure will contribute to "public understanding," as opposed to the understanding of the requester or a narrow segment of interested persons.<sup>7</sup> We note in this context that Cause of Action has both the intent and ability to make the results of this request available to the public in various medium forms. Our staff has a wealth of experience and expertise in government oversight, investigative reporting and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work and share the resulting analysis with the public, whether through Cause of Action's regularly published online newsletter, memoranda,

<sup>1</sup> Newsletters, Cause of Action, available at <http://causeofaction.org/newsletters/>.

<sup>2</sup> See, e.g., FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request HQ-2013-00940-F, Dep't of Energy (Apr. 26, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); Dep't of Commerce (Mar. 1, 2012); FOIA Request No. 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

<sup>3</sup> *Balt. Sun v. U.S. Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001); see also *Ctr. to Prevent Handgun Violence v. U.S. Dep't of the Treasury*, 981 F. Supp. 2d 24 (D.D.C. 1997) ("This self-appointed watchdog role is recognized in our system.").

<sup>4</sup> See 10 C.F.R. § 1004.9(a)(8)(i)(A)-(D) (DOE FOIA regulation setting forth the four-factor "public interest" test).

<sup>5</sup> § 1004.9(a)(8)(i)(A).

<sup>6</sup> § 1004.9(a)(8)(i)(B).

<sup>7</sup> § 1004.9(a)(8)(i)(C).



Cause of Action v. Internal Revenue Service, et al.

# Exhibit 10

Cause of Action v. Internal Revenue Service, et al.

# Exhibit 11


Mr. Robert Eckert  
August 9, 2013  
Page 2

of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.<sup>1</sup>

**Record production and contact information**

In an effort to facilitate record production, please provide the responsive records in electronic format (e.g., e-mail, .pdf). If a certain set of responsive records can be produced more readily, we respectfully request that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by email at [allan.blutstein@causeofaction.org](mailto:allan.blutstein@causeofaction.org), or by telephone at (202) 499-4232. Thank you for your attention to this matter.



ALLAN BLUTSTEIN  
SENIOR COUNSEL

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<sup>1</sup> See, e.g., FOIA Request 2013-01234-F, Dep't of Energy (July 1, 2013); FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); Dep't of Commerce (Mar. 1, 2012); FOIA Request No. 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

**Allan Blutstein**

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**From:** delivery@critsend.com on behalf of FOIARequest@hhs.gov  
**Sent:** Tuesday, August 13, 2013 9:05 AM  
**To:** Allan Blutstein  
**Cc:** FOIARequest@hhs.gov  
**Subject:** Acknowledgement of Receipt of FOIA Request

Received On: 8/13/2013

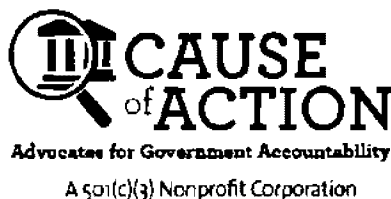
Request Number : 13-1179

This acknowledges your Freedom of Information Act request received in this Office on the above date. We have asked the appropriate action Office(s) to send the requested records to us for review.

Your request has been assigned a case number based on the date of its receipt in this office and is being processed as expeditiously as possible. Pursuant to Departmental regulations, 43 CFR Part 5 Subpart D, charges can be made if applicable. The actual processing time will depend on the complexity of your request and whether sensitive records, voluminous records, extensive search, and/or consultation with other HHS components or other executive branch agencies are involved. These agencies will provide a direct response to you. There may be a charge for those records and, in some cases, the charges may be substantial.

You may contact this office by phone at (202) 690-7453, at any time concerning your request. When making an inquiry, we request that you please refer to the FOIA Request Number above.

Freedom of Information/Privacy Acts Division  
Office of the Assistant Secretary for Public Affairs  
330 C Street, S.W.  
Switzer Building, Room 2206  
Washington, DC 20201



November 26, 2013

**VIA E-MAIL**

Ms. Karen Neuman  
Chief Privacy Officer/Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655  
E-mail: foia@hq.dhs.gov

Dear Ms. Neuman:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting all communications between (1) The Office of White House Counsel<sup>1</sup> and the U.S. Department of Homeland Security (DHS) Privacy Office, and (2) The Office of White House Counsel and the DHS Office of the General Counsel, concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

**Request for public-interest fee waiver**

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision provides that requested records shall be furnished without or at reduced charge 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."<sup>2</sup> The requested records would unquestionably shed light on the "operations or activities of the government,"<sup>3</sup> namely DHS's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of DHS's operations.<sup>4</sup> To date, DHS has not disclosed to the public—either through its regulations or policy

<sup>1</sup> For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Ms. Karen Neuman  
November 26, 2013  
Page 3

If you have any questions about this request, please contact me by e-mail at [Robyn.Burrows@causeofaction.org](mailto:Robyn.Burrows@causeofaction.org), or by telephone at (202) 499-4232. Thank you for your attention to this matter.

  
ROBYN BURROWS  
COUNSEL

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

*Privacy Office, Mail Stop 0655*

December 06, 2013

SENT VIA EMAIL TO: [robyn.burrows@causcofaction.org](mailto:robyn.burrows@causcofaction.org)

Robyn Burrows  
Counsel  
Cause of Action  
1919 Pennsylvania Ave, NW  
Suite 650  
Washington, DC 20006

Re: **2014-HQFO-00180**

Dear Ms. Burrows:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated and received on November 26, 2013, and to your request for a waiver of all assessable FOIA fees. Specifically, you requested all communications between (1) The Office of White House Counsel and the U.S. Department of Homeland Security (DHS) Privacy Office, and (2) The Office of White House Counsel and the DHS Office of the General Counsel, concerning the Office of White House Counsel's review of agency records. The time period for your request is January 1, 2012 to the present. You are not seeking access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. As the subject matter of your request is of substantial interest to two or more components of this Department or of substantial interest to another agency, we will need to consult with those entities before we issue a final response. Due to these unusual circumstances, DHS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

You have requested a fee waiver. The DHS FOIA Regulations at 6 CFR § 5.11(k)(2) set forth six factors DHS must evaluate to determine whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations

Cause of Action v. Internal Revenue Service, et al.

# Exhibit 15



You have requested a fee waiver. The DHS FOIA Regulations at 6 CFR § 5.11(k)(2) set forth six factors DHS must evaluate to determine whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government," (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities, (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons, (4) Whether the contribution to public understanding of government operations or activities will be "significant," (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, DHS has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various DHS program offices as a result of the searches conducted in response to your FOIA request. DHS will, pursuant to DHS regulations applicable to non-commercial requesters, provide two hours of search time and process the first 100 pages at no charge to you. If upon review of these documents, DHS determines that the disclosure of the information contained in those documents does not meet the factors permitting DHS to waive the fees, then DHS will at that time either deny your request for a fee waiver entirely, or will allow for a percentage reduction in the amount of the fees corresponding to the amount of relevant material found that meets the factors allowing for a fee waiver. In either case, DHS will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by applicable law.

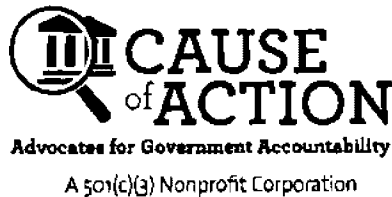
In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged for any search time and duplication beyond the free two hours and 100 pages mentioned in the previous paragraph. You will be charged 10 cents per page for duplication and search time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. In the event that your fee waiver is denied, we will construe the submission of your request as an agreement to pay up to \$25.00. This office will contact you before accruing any additional fees.

Your request has been assigned reference number **2014-HQFO-00180**. Please refer to this identifier in any future correspondence. If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1- 866-431-0486 or 202-343-1743.

Sincerely,

*Mia Day*  
Mia Day

FOIA Program Specialist



November 26, 2013

**VIA ONLINE SUBMISSION**

FOIA Officer  
U.S. Department of Housing and Urban Development  
Freedom of Information Act Office  
451 7th Street, SW, Room 10139  
Washington, DC 20410-3000

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting communications between (1) The Office of White House Counsel<sup>1</sup> and the U.S. Department of Housing and Urban Development (HUD) FOIA Office, and (2) The Office of White House Counsel and the HUD Office of the General Counsel, concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

**Request for public-interest fee waiver**

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision provides that requested records shall be furnished without or at reduced charge 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."<sup>2</sup> The requested records would unquestionably shed light on the "operations or activities of the government,"<sup>3</sup> namely HUD's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of HUD's operations.<sup>4</sup> To date, HUD has not disclosed to the public—either through its regulations or policy memoranda—how it processes agency records deemed to contain White House equities. Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Our staff members have a wealth of

<sup>1</sup> For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

November 26, 2013  
Page 3

If you have any questions about this request, please contact me by e-mail at [Robyn.Burrows@causeofaction.org](mailto:Robyn.Burrows@causeofaction.org), or by telephone at (202) 499-4232. Thank you for your attention to this matter.

  
ROBYN BURROWS  
COUNSEL



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-3000

OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER

December 27, 2013

Robyn Burrows, Esq.  
Cause of Action  
Suite 650  
1919 Pennsylvania Avenue, NW  
Washington, DC 20006

RE: Freedom of Information Act Request  
FOIA Control No.: 14-FI-HQ-00375

Dear Ms. Burrows:

This letter acknowledges the Department of Housing and Urban Development's receipt of your Freedom of Information Act (FOIA) request dated November 26, 2013. Your request was received in the Department's FOIA Branch on December 3, 2013.

Pursuant to the FOIA, 5 U.S.C. 552(a)(6)(A)(i), once HUD properly receives a FOIA request, the Department has 20 working days within which to make a determination on the request unless unusual circumstances exist. Under unusual circumstances, such as an agency's backlog, or the need to examine a voluminous amount of records required by the request, HUD can extend the 20-day time limit for processing a request.

The Department will comply with your request to the extent permissible by law. Any records not subject to an exemption will be forwarded to you promptly upon the completion of HUD's search and review process. Your request has been assigned to Mrs. Sandra J. Wright for processing. If you have any questions regarding your request, please contact Mrs. Wright at (202) 402-5510.

Thank you for your interest in the Department's programs and policies.

Sincerely,

FOIA Branch  
Office of the Executive Secretariat



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-3000

OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER

APR 21 2014

Robyn Burrows, Esq.  
Cause of Action  
Suite 650  
1919 Pennsylvania Avenue, NW  
Washington, DC 20006

RE: Freedom of Information Act Request  
FOIA Control No.: 14-FI-HQ-00375

Dear Ms. Burrows:

This letter is in response to your Freedom of Information Act (FOIA) request dated November 26, 2013. You asked for copies of all records reflecting communications between the Office of White House Counsel, the Department of Housing and Urban Development's FOIA Office, and the Office of White House Counsel and HUD's Office of General Counsel, concerning the Office of White House Counsel's review of HUD's records for the timeframe of January 1, 2012, to the present.

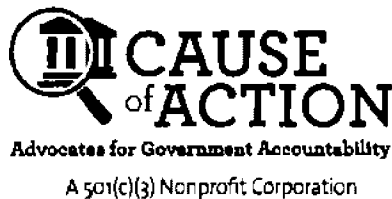
Under the Freedom of Information Act, an agency may extend the time to respond to a FOIA request for a limited number of reasons. One such reason, which is applicable to your request, is that the Department of Housing and Urban Development is unable to respond to your FOIA request within the statutory time frame due to an ongoing search for responsive records. HUD's search and review process should be completed within the next 15 to 20 days.

If you have questions concerning your request, you may contact Mrs. Sandra J. Wright at (202) 402-5510.

Sincerely,

A handwritten signature in black ink, reading "Deborah R. Snowden". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Deborah R. Snowden  
Chief, FOIA Branch  
Office of the Executive Secretariat



November 26, 2013

**VIA FIRST CLASS MAIL**

Ms. Carmen L. Mallon  
Chief of Staff  
Office of Information Policy  
U.S. Department of Justice  
Suite 11050  
1425 New York Avenue, N.W.  
Washington, D.C. 20530-0001

Dear Ms. Mallon:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting all communications between (1) The Office of White House Counsel<sup>1</sup> and the U.S. Department of Justice (DOJ) Office of Information Policy, and (2) The Office of White House Counsel and the DOJ Office of the General Counsel, concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

**Request for public-interest fee waiver**

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision provides that requested records shall be furnished without or at reduced charge 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."<sup>2</sup> The requested records would unquestionably shed light on the "operations or activities of the government,"<sup>3</sup> namely DOJ's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of DOJ's operations.<sup>4</sup> To date, DOJ has not disclosed to the public—either through its regulations or policy memoranda—how it processes agency records deemed to contain White House equities. Cause

<sup>1</sup> For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

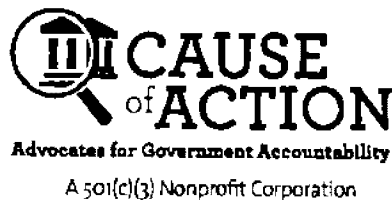
<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Ms. Carmen Mallon  
November 26, 2013  
Page 3

If you have any questions about this request, please contact me by e-mail at [Robyn.Burrows@causeofaction.org](mailto:Robyn.Burrows@causeofaction.org), or by telephone at (202) 499-4232. Thank you for your attention to this matter.

  
ROBYN BURROWS  
COUNSEL



February 10, 2014

**VIA E-MAIL**

Ms. Elizabeth Farris  
Supervisory Paralegal  
Office of Legal Counsel  
Department of Justice  
950 Pennsylvania Ave., NW, Rm. 5515  
Washington, D.C. 20530-0001  
E-mail: usdoj-officeoflegalcounsel@usdoj.gov

**Re: Freedom of Information Act Request**

Dear Ms. Farris:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting all communications between the Office of White House Counsel<sup>1</sup> and the U.S. Department of Justice (DOJ) Office of Legal Counsel (OLC), concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

**Request for public-interest fee waiver**

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision provides that requested records shall be furnished without or at reduced charge 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."<sup>2</sup> The requested records would unquestionably shed light on the "operations or activities of the government,"<sup>3</sup> namely DOJ's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of DOJ's operations.<sup>4</sup> To date, DOJ has not disclosed to the public—either through its regulations or policy

<sup>1</sup> For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>3</sup> *Id.*


<sup>4</sup> *Id.*



Ms. Elizabeth Farris  
February 10, 2014  
Page 3

readily, we respectfully request that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by e-mail at [Robyn.Burrows@causeofaction.org](mailto:Robyn.Burrows@causeofaction.org), or by telephone at (202) 499-4232. Thank you for your attention to this matter.

  
\_\_\_\_\_  
ROBYN BURROWS  
COUNSEL



U.S. Department of Justice  
Office of Information Policy  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

Telephone: (202) 514-3642

January 7, 2014

Ms. Robyn Burrows  
Cause of Action  
Suite 650  
1919 Pennsylvania Avenue, NW  
Washington, DC 20006  
[robyn.burrows@causeaction.org](mailto:robyn.burrows@causeaction.org)

Re: OIP/14-00863 (F)  
LAD:SBT

Dear Ms. Burrows:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated November 26, 2013, and received in this Office on December 5, 2013, in which you requested 1) communications between the Office of White House Counsel and the Office of Information Policy, and 2) communications between the Office of White House Counsel and the "[Department of Justice] Office of General Counsel" concerning the Office of White House Counsel's review of agency records. The date range for which you are seeking records is from January 1, 2012 to the date the search began, which in this instance is December 31, 2013. This response is made on behalf of the Office of Information Policy (OIP).

Regarding item number two of your request seeking communications with the "DOJ Office of the General Counsel," please be advised that no such office exists. You may wish to review an organization chart including all Department components, which is available at the following link: <http://www.justice.gov/oip/foiacontact/index.html>.

Regarding the remainder of your request (item number one) concerning communications between OIP and the Office of White House Counsel, please be advised that we are currently processing it and will respond to you again once any responsive records are located and disclosure determinations are made. The time needed to complete our processing of your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in about a month, whereas complex requests necessarily take longer. At this time, your request has been assigned to the complex track. In an effort to speed up our records search, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing, should records be located; or you may wish to await the completion of our records search to discuss either of these options.

Cause of Action v. Internal Revenue Service, et al.

## Exhibit 22

Cause of Action v. Internal Revenue Service, et al.

## Exhibit 23

November 26, 2013

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interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through Cause of Action's regularly published online newsletter, memoranda, reports, or press releases.<sup>5</sup>

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding DOS's heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

#### **Request for news media status**

For fee purposes, Cause of Action also qualifies as a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii)(II). Cause of Action is organized and operated, among other things, to publish and broadcast news, *i.e.*, information that is about current events or that would be of current interest to the public. Cause of Action gleans the information that it regularly publishes from a wide variety of sources and methods, including whistleblowers/insiders, government agencies, universities, scholarly works, and FOIA requests. Cause of Action routinely and systematically disseminates information acquired from such sources to the public through various media. For example, Cause of Action distributes articles, blog posts, published reports, and newsletters about current events of interest to the general public through its website, which has been viewed just under 120,000 times in the past year alone.<sup>6</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail. As a result of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.<sup>7</sup>

#### **Record production and contact information**

In an effort to facilitate record production, please provide the responsive records in electronic format (*e.g.*, e-mail, .pdf). If a certain set of responsive records can be produced more readily, we respectfully request that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

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<sup>5</sup> See <http://www.causeofaction.org>.

<sup>6</sup> Google Analytics for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>7</sup> See, *e.g.*, FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 7, 2013); FOIA Request 2013-01234-F, Dep't of Energy (July 1, 2013); FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

Cause of Action v. Internal Revenue Service, et al.

## Exhibit 24

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding DOS's heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

For fee purposes, Cause of Action also qualifies as a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii)(II). Cause of Action is organized and operated, among other things, to publish and broadcast news, i.e., information that is about current events or that would be of current interest to the public. Cause of Action gleans the information that it regularly publishes from a wide variety of sources and methods, including whistleblowers/insiders, government agencies, universities, scholarly works, and FOIA requests. Cause of Action routinely and systematically disseminates information acquired from such sources to the public through various media. For example, Cause of Action distributes articles, blog posts, published reports, and newsletter about current events of interest to the general public through its website, which has been viewed just under 120,000 times in the past year alone. Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail. As a result of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.

My additional comments are as follows:

In an effort to facilitate record production, please provide the responsive records in electronic format (e.g., e-mail, .pdf). If a certain set of responsive records can be produced more readily, we respectfully request that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by e-mail at [Robyn.Burrows@causeofaction.org](mailto:Robyn.Burrows@causeofaction.org), or by telephone at (202) 499-4232. Thank you for your attention to this matter.

Contact Information

Ms. Robyn Burrows

1919 Pennsylvania Ave NW

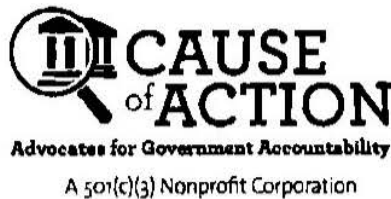
Suite 650

Washington, District of Columbia 20006

P: (202) 499-4232

F: N/A

[robyn.burrows@causeofaction.org](mailto:robyn.burrows@causeofaction.org)



A 501(c)(3) Nonprofit Corporation

November 26, 2013

**VIA E-MAIL**

Ms. Kathy Ray  
U.S. Department of Transportation  
Departmental FOIA Office  
1200 New Jersey Ave, SE  
Washington, DC 20590  
E-mail: [ost.foia@dot.gov](mailto:ost.foia@dot.gov)

Dear Ms. Ray:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting communications between (1) The Office of White House Counsel<sup>1</sup> and the Department of Transportation (DOT) Departmental FOIA Office, and (2) The Office of White House Counsel and the DOT Office of the General Counsel, concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

**Request for public-interest fee waiver**

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision provides that requested records shall be furnished without or at reduced charge 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."<sup>2</sup> The requested records would unquestionably shed light on the "operations or activities of the government,"<sup>3</sup> namely DOT's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of DOT's operations.<sup>4</sup> To date, DOT has not disclosed to the public—either through its regulations or policy memoranda—how it processes agency records deemed to contain White House equities. Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Our staff members have a wealth of

<sup>1</sup> For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*



Ms. Kathy Ray  
November 26, 2013  
Page 3

If you have any questions about this request, please contact me by e-mail at [Robyn.Burrows@causeofaction.org](mailto:Robyn.Burrows@causeofaction.org), or by telephone at (202) 499-4232. Thank you for your attention to this matter.

  
ROBYN BURROWS  
COUNSEL



**U.S. Department  
of Transportation**

Office of the Secretary  
of Transportation

**GENERAL COUNSEL**

1200 New Jersey Avenue, SE  
Washington, DC 20590

December 18, 2013

Robyn Burrows  
Cause of Action  
1919 Pennsylvania Avenue, NW  
Suite 650  
Washington, DC 20006

Dear Ms. Burrows:

The purpose of this letter is to acknowledge receipt of your recent request for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You requested a copy of records reflecting communications between (1) the Office of the White House Counsel and the Department of Transportation Departmental FOIA Office, and (2) the Office of the White House Counsel and the DOT Office of the General Counsel, concerning the Office of the White House Counsel's review of agency records. The time frame for this request is January 1, 2012 to the present.

Your letter has been given identification number **2014-51**.

Please be advised that all FOIA requests will be handled on a first-in/first-out basis. Your request will be addressed in the order it was received. We regret any inconvenience caused by the delay.

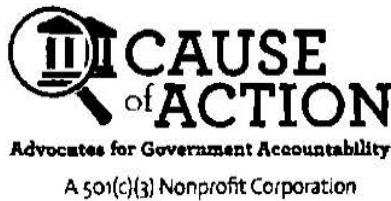
Processing fees may apply for FOIA requests as set forth in the Department of Transportation's (DOT) FOIA regulation (49 CFR Part 7.41).

If you have questions concerning your request, please call our FOIA Request Service Center at (202) 366-4542.

Sincerely,

A handwritten signature in cursive script, appearing to read "Darlene A. Wallace".

Darlene A. Wallace  
Program Assistant  
FOIA Division



May 6, 2014

**VIA EMAIL**

Mr. Hugh Gilmore  
FOIA Public Liaison  
Department of the Treasury  
Washington, D.C. 20220  
Phone: 202-622-0930  
Email: Hugh.Gilmore@treasury.gov

Dear Mr. Gilmore:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting communications between (1) the Office of White House Counsel and the Department of the Treasury's (Treasury) Office of Disclosure Services, and (2) the Office of White House Counsel and the Treasury's Office of General Counsel (including the Office of Chief Counsel for the Office of Financial Stability), concerning the Office of White House Counsel's review of agency records.<sup>1</sup> The time period for this request is January 1, 2010 to January 1, 2013.

Please note that Cause of Action does not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover emails).

**Request for public-interest fee waiver**

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision provides that requested records shall be furnished without or at reduced charge 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."<sup>2</sup> The requested records would shed light on the "operations or activities of the government,"<sup>3</sup> namely Treasury's policies and procedures with respect to processing records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of Treasury operations.<sup>4</sup> To date, Treasury has not disclosed to the public—either through its regulations or

<sup>1</sup> Memorandum from Gregory Craig, Counsel to the President, to All Executive Department and Agency General Counsels (Apr. 15, 2009), available at <http://causeofaction.org/assets/uploads/2013/06/White-House-memo-equities.pdf> 792f52c.

<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*


Mr. Hugh Gilmore  
May 6, 2014  
Page 3

appropriately recognized Cause of Action's news media status in connection with its FOIA requests.<sup>8</sup>

**Record production and contact information**

In an effort to facilitate record production, please provide the responsive records in electronic format (e.g., email, .pdf). If a certain set of responsive records can be produced more readily, Cause of Action respectfully requests that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by email at Robyn.Burrows@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.

  
ROBYN BURROWS  
COUNSEL

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<sup>8</sup> See, e.g., FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013); FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 7, 2013); FOIA Request 2013-01234-F, Dep't of Energy (July 1, 2013, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request 12-00455-F, Dep't of Educ. (Jan. 20, 2012).



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

May 7, 2014

RE: 2014-05-025

Ms. Robyn Burrows  
Cause of Action  
1919 Pennsylvania Ave., N.W., Suite 650  
Washington, DC 20006

Dear Ms. Burrows:

This letter acknowledges the receipt of your Freedom of Information Act (FOIA) request to U.S. Department of the Treasury, dated May 6, 2014. You have requested records of communications dated January 1, 2010 to January 1, 2013 between the Office of the White House Counsel and the Office of Disclosure Services and/or Office of General Counsel (including the Office of Chief Counsel for the Office of Financial Stability) concerning the Office of White House Counsel's review of agency records. A copy of your request is enclosed.

We have initiated a search for records that would be responsive to your request. Every effort will be made to provide you with a timely response; however, please be advised that unusual circumstances exist regarding a search for and review of the information you have requested due to the volume of potentially responsive records. Additionally, two or more program offices will need to be consulted to prepare a response to your request. This will require an additional processing extension of ten (10) days.

You have also requested a fee waiver. The Treasury's FOIA Regulations, 31 CFR § 1.7(d) and Department of Justice Guidance<sup>1</sup> set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government;" (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to public understanding of government operations or activities will be "significant;" (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, I have determined your fee waiver will be conditionally granted. Treasury's final fee waiver determination will be based upon a sampling of records

<sup>1</sup> See FOIA Update, Vol. VIII, No. 1, at 3-10 ("New Fee Waiver Policy Guidance")

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## Exhibit 29

Mr. James P. Horan  
November 26, 2013  
Page 2

both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Our staff members have a wealth of experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through Cause of Action's regularly published online newsletter, memoranda, reports, or press releases.<sup>5</sup>

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding VA's heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

#### **Request for news media status**

For fee purposes, Cause of Action also qualifies as a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii)(II). Cause of Action is organized and operated, among other things, to publish and broadcast news, *i.e.*, information that is about current events or that would be of current interest to the public. Cause of Action gleans the information that it regularly publishes from a wide variety of sources and methods, including whistleblowers/insiders, government agencies, universities, scholarly works, and FOIA requests. Cause of Action routinely and systematically disseminates information acquired from such sources to the public through various media. For example, Cause of Action distributes articles, blog posts, published reports, and newsletters about current events of interest to the general public through its website, which has been viewed just under 120,000 times in the past year alone.<sup>6</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail. As a result of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.<sup>7</sup>

#### **Record production and contact information**

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<sup>5</sup> See <http://www.causeofaction.org>.

<sup>6</sup> Google Analytics for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>7</sup> See, *e.g.*, FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 7, 2013); FOIA Request 2013-01234-F, Dep't of Energy (July 1, 2013); FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

Cause of Action v. Internal Revenue Service, et al.

## Exhibit 30



**Allan Blutstein**

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**Subject:** FW: FOIA Request Question

**From:** Karnay, Laurie [<mailto:Laurie.Karnay@va.gov>]  
**Sent:** Friday, February 21, 2014 5:10 PM  
**To:** Robyn Burrows  
**Subject:** RE: FOIA Request Question

Robyn:

My apologies. We did receive your request. The portion for the FOIA Office is tracking number 14-01320-F and for the OGC portion is 14-01321-F.

*Laurie L. Karnay  
Department of Veterans Affairs  
VACO FOIA Service (005R1C)  
1100 First Street, NE  
Washington, DC 20002  
(202) 632-7465 - direct*

**From:** Robyn Burrows [<mailto:robyn.burrows@causeofaction.org>]  
**Sent:** Friday, February 21, 2014 2:21 PM  
**To:** Karnay, Laurie  
**Subject:** [EXTERNAL] FOIA Request Question

Hi Laurie,

I have a question about a FOIA request my organization sent on November 26, 2013. I'm not sure we received an acknowledgment letter. Could you give me a call back at your earliest convenience?

Thank you,

Robyn

**Robyn Burrows | Counsel | Cause of Action**  
1919 Pennsylvania Avenue, N.W. | Suite 650 | Washington, DC 20006  
[Robyn.Burrows@causeofaction.org](mailto:Robyn.Burrows@causeofaction.org)  
202.499.2421  
*Admitted to Practice Only in Virginia  
Practice supervised by member of the D.C. Bar, Lorinda Harris.*

Confidentiality

~~The information contained in this communication may be confidential, is intended only for the use of the recipient named above, and may be legally privileged. It is not intended as legal advice, and may not be relied upon or used as legal advice. Nor does this communication establish an attorney-client relationship between us. If~~

## ROUTING AND TRANSMITTAL SLIP

Date

08/28/2014

TO: (Name, office symbol, room number,  
building, Agency/Post)

Initials

Date

1. L/EX

2.

3.

4.

5.

<input checked="" type="checkbox"/>	Action	<input type="checkbox"/>	File	<input type="checkbox"/>	Note and Return
<input type="checkbox"/>	Approval	<input type="checkbox"/>	For Clearance	<input type="checkbox"/>	Per Conversation
<input type="checkbox"/>	As Requested	<input type="checkbox"/>	For Correction	<input type="checkbox"/>	Prepare Reply
<input type="checkbox"/>	Circulate	<input type="checkbox"/>	For Your Information	<input type="checkbox"/>	See Me
<input type="checkbox"/>	Comment	<input type="checkbox"/>	Investigate	<input type="checkbox"/>	Signature
<input type="checkbox"/>	Coordination	<input type="checkbox"/>	Justify	<input type="checkbox"/>	

## REMARKS

8/28/2014 incoming from mail room SA-2 receipted mail 3572086

Cause of Action

v.

Civil Action No. 14 -1407

Internal Revenue Service, et al  
US Department of StateDO NOT use this form as a RECORD of approvals, concurrences, disposals,  
clearances, and similar actions

FROM: (Name, organization symbol, Agency/Post)

Veronica Williams - Staff Assistant - Office of the (L)egal Adviser

Room Number - Building

6419 - HST

Phone Number

202-647-9417

AUTHORIZED FOR LOCAL REPRODUCTION  
Previous Edition is Usable

7540-00-935-5862

OPTIONAL FORM 41 (REV. 3/2007)

CERTIFIED MAIL

CAUSE OF ACTION  
1919 PENN AVE NW, STE 650  
WASHINGTON, DC 20006



9402 6118 9956 1366 1988 03

PS Form 3800 5/02

\$0.38  
US POSTAGE  
PRIORITY  
COMBIPRICE  
FROM 2006  
AUG 18 2014  
observed

*[Signature]*  
United States Department of State  
2201 C Street, NW  
Washington DC 20520-0099

DEPARTMENT OF STATE  
A/GIS/IPS/MAILROOM  
RM.8100, SA-2  
WASHINGTON, DC 20522

DATE SENT: 8/27/14  
CLASSIFIED-MARSHAL-V 3572086  
Return Receipt To Sender  
TO: Sandra J. Williams 800 SA-2  
FROM: L. Front Office, MS Room 6419  
DATE RECEIVED: 8/28/14  
SIGNATURE: [Signature]  
IDENTIFICATION: 9402-10157-1365  
176803

UNCLASSIFIED

ADDRESSEE SIGN AFTER DELIVERY AND RETURN TO SENDER.  
Option: Form 112 RETAINED BY SENDER FOR 3 YEARS  
Rev. 8/79

UNION FEDERAL PULP INDUSTRIES, INC.  
LEAVENWORTH, KANSAS

8/27/14  
REGISTERED V 3572086  
FROM: Sandra J. Williams 800 SA-2  
TO: L. Front Office, MS Room 6419  
THO. N. Williams

PLEASE REVERSE SIDE FOR PASTING TO ENVELOPE OF "900 SA-2"

Message Receipt

3572086

Ms. Veronica Williams  
L Front Office  
Main State Department  
Room 6419

8/28/2014 send to L/EX

---

**From:** State Department FOIA <noreply@state.gov>  
**Sent:** Tuesday, November 26, 2013 9:40 AM  
**To:** FOIA Request  
**Subject:** FOIA Request Letter

Thank you for filing your FOIA request online on 11/26/2013. Here is a review of your request.

The records I request can be described as follows:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting communications between (1) The Office of White House Counsel and the U.S. Department of State (DOS) Office of Information Programs and Services, and (2) The Office of White House Counsel and the DOS Office of the Legal Adviser, concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

The time period of my request is from 01/01/2012 to present

I am affiliated with an educational or noncommercial scientific institution seeking information for a scholarly or scientific purpose and not for commercial use.  
Additional documentation will be required.

I am willing to pay \$25 for my request.

I request a waiver of all fees for this request.

Reason: Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision provides that requested records shall be furnished without or at reduced charge 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." The requested records would unquestionably shed light on the "operations or activities of the government," namely DOS's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of DOS operations. To date, DOS has not disclosed to the public—either through its regulations or policy memoranda—how it processes agency records that are deemed to contain White House equities. Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Our staff members have a wealth of experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through Cause of Action's regularly published online newsletter, memoranda, reports, or press releases.

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue

Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding DOS's heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

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My additional comments are as follows:

In an effort to facilitate record production, please provide the responsive records in electronic format (e.g., e-mail, .pdf). If a certain set of responsive records can be produced more readily, we respectfully request that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

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Contact Information

Ms. Robyn Burrows  
1919 Pennsylvania Ave NW  
Suite 650  
Washington, District of Columbia 20006  
P: (202) 499-4232  
F: N/A  
[robyn.burrows@causeofaction.org](mailto:robyn.burrows@causeofaction.org)

**From:** Rothschild, Trip <Trip.Rothschild@nrc.gov>  
**Sent:** Thursday, October 13, 2011 4:42 PM  
**To:** Dorosin, Joshua L <DorosinJL@state.gov>  
**Cc:** Hirsch, Patricia <Patricia.Hirsch@nrc.gov>  
**Subject:** RE: Where do things stand?

(b)(5)

**From:** Dorosin, Joshua L [mailto:DorosinJL@state.gov]  
**Sent:** Thursday, October 13, 2011 3:57 PM  
**To:** Rothschild, Trip  
**Subject:** RE: Where do things stand?

Thanks,

(b)(5)

**From:** Rothschild, Trip [mailto:Trip.Rothschild@nrc.gov]  
**Sent:** Thursday, October 13, 2011 3:55 PM  
**To:** Dorosin, Joshua L  
**Subject:** RE: Where do things stand?

(b)(5)

**From:** Dorosin, Joshua L [mailto:DorosinJL@state.gov]  
**Sent:** Thursday, October 13, 2011 3:53 PM  
**To:** Dorosin, Joshua L; Rothschild, Trip  
**Cc:** Hirsch, Patricia  
**Subject:** RE: Where do things stand?

Trip, sorry, one other question:

(b)(5)

Thanks. Josh

**From:** Dorosin, Joshua L  
**Sent:** Thursday, October 13, 2011 3:46 PM  
**To:** 'Rothschild, Trip'  
**Cc:** Hirsch, Patricia  
**Subject:** RE: Where do things stand?

Thanks Trip,

(b)(5)

C05916369

(b)(5)

Best, Josh

**From:** Rothschild, Trip [mailto:Trip.Rothschild@nrc.gov]  
**Sent:** Wednesday, October 12, 2011 5:43 PM  
**To:** Dorosin, Joshua L  
**Cc:** Hirsch, Patricia  
**Subject:** RE: Where do things stand?

(b)(5)

**From:** Dorosin, Joshua L [mailto:DorosinJL@state.gov]  
**Sent:** Wednesday, October 12, 2011 3:57 PM  
**To:** Rothschild, Trip; Siskel, Edward  
**Subject:** RE: Where do things stand?

Trip/Ed –

We met on Friday with Joe Macmanus, our Principal Deputy Assistant Secretary for Legislative Affairs (b)(5)

(b)(5)

(b)(5)

Thanks. Josh

**From:** Rothschild, Trip [mailto:Trip.Rothschild@nrc.gov]  
**Sent:** Wednesday, October 12, 2011 8:05 AM  
**To:** Dorosin, Joshua L  
**Subject:** Where do things stand?





United States Department of State  
Washington, D.C. 20520

February 27, 2017

Case Number: F-2013-19970

Requester: Cause of Action Institute

TO: Nuclear Regulatory Commission  
FOIA Officer  
Mail Stop T5-F09  
Washington, DC 20555-0001  
FOIA.resource@nrc.gov

FROM: Eric F. Stein, Director *See for*  
Office of Information Programs and Services  
Global Information Services  
DOS Bureau of Administration

SUBJECT: FOI/PA Referral for Consultation — LITIGATION

In processing this request, we have located the attached documents. The attached Department of State material requested in the above case appears also to be of interest to your agency.

Our preliminary determinations are noted on each document. Portions for withholding (if any) are as indicated, and the exemptions are noted in the margin. Before we take final action, we ask that you review this material. We ask that you do not delete portions of any document on non-responsive grounds.

Please be advised that this case is in litigation. We would therefore appreciate expedited handling, and suggest that you consult with your office of general counsel. Please review this material and provide your response to us by **March 10, 2017**.

If you request withholdings on behalf of your agency, please provide appropriately marked copies as well as denial authority and justification.

~~SENSITIVE BUT UNCLASSIFIED~~  
~~(UNCLASSIFIED WHEN SEPARATED FROM ATTACHMENT)~~

Please address your reply directly to me through e-mail at [LucMD@state.gov](mailto:LucMD@state.gov). Cite our case number and return all documents as received. If you request holdings on behalf of your office, please provide appropriately marked copies as well as denial authority. If you have any inquiries please contact me at (b)(6) or by e-mail listed above.

Thank you.

ENCLOSURES:

DOS FOIA Initial Request Letter

Complaint

One document that requires consult

~~SENSITIVE BUT UNCLASSIFIED~~  
~~(UNCLASSIFIED WHEN SEPARATED FROM ATTACHMENT)~~

(b)(5),(b)(6)

# NRDC

MAR - 2 2017

February 28, 2017

**Via Certified Mail and Email**

Dionne Hardy, FOIA Officer  
Office of Management and Budget  
725 17th Street NW, Room 9026  
Washington, DC 20503  
OMBFOIA@omb.eop.gov

17-088  
145025

**Re: Freedom of Information Act Request for Communications Regarding  
Executive Order 13771 and Interim Guidance**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and applicable Office of Management and Budget (OMB) regulations, 5 C.F.R. §§ 1303.1–1303.70.

**I. Description of Records Sought**

Please produce records<sup>1</sup> in OMB's possession, custody, or control that are, include, or reflect:

- (1) Records from January 30, 2017 or later regarding the implementation of Executive Order 13771;
- (2) Records from January 30, 2017 or later regarding the issuance of OMB's Interim Guidance Implementing Section 2 of Executive Order 13771, dated February 2, 2017; and

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any OMB office, including, but not limited to, OMB Headquarters offices, and specifically including OMB offices in possession of responsive records.

**NATURAL RESOURCES DEFENSE COUNCIL**

111 SUTTER STREET | SAN FRANCISCO, CA | 94104 | T 415.875.6100 | F 415.875.6161 | NRDC.ORG

- (3) Records from January 30, 2017 or later regarding the implementation of OMB's Interim Guidance Implementing Section 2 of Executive Order 13771, dated February 2, 2017.

## **II. Request for a Fee Waiver**

NRDC requests that OMB waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 5 C.F.R. § 1303.70. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 5 C.F.R. § 1303.50(c).

### **A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be "likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. § 1303.70.

#### **1. Subject of the request**

The records requested here reflect communications regarding an Executive Order that, per its title, aims to reduce regulation and control the regulatory costs of executive departments and agencies. The requested records thus directly concern "the operations or activities of the Government." 5 C.F.R. § 1303.70.

#### **2. Informative value of the information to be disclosed**

The requested records are "likely to contribute significantly to" the public's understanding of government operations and activities. 5 C.F.R. § 1303.70. The public does not currently possess comprehensive information regarding the intended scope and implementation of Executive Order 13771. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President has made public statements regarding his intent to "cut regulations by 75 percent." *See* "President Trump to Cut Regulations by '75 Percent' – How Real Is That?" Chris Arnold, *NPR*, Jan. 24, 2017, <http://www.npr.org/2017/01/24/511341779/president-trump-to-cut-regulations-by-75-percent-how-real-is-that>. There may be similar communications at OMB that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).



We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the scope and implementation of Executive Order 13771, as further discussed below. However, if OMB were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

**3. *Contribution to an understanding of the subject by the public is likely to result from disclosure***

NRDC's expertise in the regulatory process, its extensive communications capabilities, and its proven history of disseminating information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use the disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the regulatory process. As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. These include, but are not limited to the following:<sup>2</sup>

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.

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<sup>2</sup> Specific viewership, readership, and circulation numbers in this letter for NRDC media channels were current last calendar year. We believe that current figures are not materially less than those cited here.

- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, "The requirement to rebuild US fish stocks: Is it working?" *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, "The Untapped Potential of California's Water Supply: Efficiency, Reuse, and Stormwater," June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* "Saving Water in California," *N.Y. Times*, July 9, 2014 (discussing the report's estimates) (Att. 13);
- Article, "Waves of phony charges over new clean water safeguards," *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, "Don't Buy the Smear of the EPA," *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, "Conservationists Call For Quiet: The Ocean Is Too Loud!" Nat'l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);



- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, "Pollution Still a Hazard to U.S. Beaches," CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, "World Business Summit on Climate Change," May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, "Is there a 'proper level' of compliance with environmental law?" *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are "generally recognized as safe" (Att. 22). *See also* Kimberly Kindy, "Are secret, dangerous ingredients in your food?" *Wash. Post*, Apr. 7, 2014 (discussing NRDC's report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA's part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, "Drug critic slams FDA over antibiotic oversight in meat production," *Reuters*, Jan. 27, 2014 (discussing NRDC's report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of



industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).

- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," Nat'l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, "Confidential Papers

Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).<sup>3</sup>

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

#### **4. Significance of the contribution to public understanding**

The records requested shed light on a matter of considerable public interest and concern: Executive Order 13771 and its effect on future agency rulemakings.

Public understanding of the regulatory process under Executive Order 13771 would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the scope of Executive Order 13771 and its impact on future agency rulemakings. Disclosure would also help the public to better understand and evaluate OMB's role in the issuance and implementation of Executive Order 13771. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 5 C.F.R. § 1303.70.

#### **B. NRDC Satisfies the Second Fee Waiver Requirement**

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. §

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<sup>3</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).



1303.70. NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. "Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Envtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the regulatory process. As noted at Part II.A, any work done by OMB on Executive Order 13771 relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of Executive Order 13771 and its effect on future agency rulemakings.

### C. NRDC Is a Media Requester

Even if OMB denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and OMB's FOIA regulations, 5 C.F.R. § 1303.50(c); see also 5 C.F.R. § 1303.30(j) (defining "[r]epresentative of the news media"). A representative of the news media is "any person or entity that 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); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, U.S. Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 5 C.F.R. § 1303.30(j) ("Examples of news media entities include . . . publishers of periodicals."). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on Twitter and Facebook, and through content distributed to outlets such as Medium. See OPEN

Gov't Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that "as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities"). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements "are regularly granted news representative status." *Serv. Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the ACLU).<sup>4</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC's publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm'n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it "distributes work to an audience and is especially organized around doing so"). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with OMB's FOIA regulations for all or a portion of the requested records. *See* 5 C.F.R. § 1303.40. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

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<sup>4</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media.

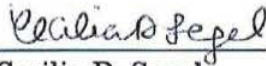


#### IV. Conclusion

Please email me the requested records or, if more convenient, email me to request a link to a Dropbox folder where you can upload them. Alternatively, if it is not possible to send the documents electronically, please mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; OMB's search for—or deliberations concerning—certain records should not delay the production of others that OMB has already retrieved and elected to produce. If OMB concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,



Cecilia D. Segal

Litigation Fellow

Natural Resources Defense Council, Inc.

111 Sutter St., 21st Floor

San Francisco, CA 94104

[csegal@nrdc.org](mailto:csegal@nrdc.org)

415-875-6112

**Enclosures (sent via Dropbox and certified mail):**

<https://www.dropbox.com/sh/kdtbekevh6wh7js/AACby3yrkdXQaSpIo38SXP1ma?dl=0>

Attachments 1 through 42 (single .pdf file)

---

**From:** Segal, Cecilia <csegal@nrdc.org>  
**Sent:** Tuesday, February 28, 2017 4:53 PM  
**To:** FN-OMB-FOIA  
**Subject:** Freedom of Information Act Request  
**Attachments:** 2017-02-28 OMB FOIA - final.pdf

Dear FOIA Officer,

Attached please find a Freedom of Information Act Request.

The attachments referenced in support of the fee waiver and fee reduction request are available on Dropbox at this link:

<https://www.dropbox.com/sh/kdtbekevh6wh7js/AACby3yrkdXQaSpIo38SXP1ma?dl=0>

A hard copy of my request, along with the attachments, has also been sent via certified mail.

Thank you for your attention to this matter. Please email or call me directly with questions.

Regards,  
Cecilia Segal

**CECILIA SEGAL**  
*Litigation Fellow*

**NATURAL RESOURCES DEFENSE COUNCIL**  
111 SUTTER ST., 21ST FLOOR  
SAN FRANCISCO, CA 94104  
T 415.875.6112  
[CSEGAL@NRDC.ORG](mailto:CSEGAL@NRDC.ORG)

**PRIVILEGE AND CONFIDENTIALITY NOTICE**

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# RE: RE: Follow On Guidance on the Executive Order "Reducing Regulation and Controlling Regulatory Costs"

From:

"Albert, Michelle" <michelle.albert@nrc.gov>

To:

FN-OMB-Reducing Regulation <(b)(6)>

Cc:

"Zobler, Marian" <marian.zobler@nrc.gov>, "Ammon, Bernice" <bernice.ammon@nrc.gov>, "Clark, Michael" <michael.clark@nrc.gov>

Date:

Fri, 10 Feb 2017 12:32:58 -0500

The NRC staff has no comments.

Thank you,

Michelle D. Albert  
Senior Attorney | Office of the General Counsel  
Legal Counsel, Legislation, and Special Projects Division  
U.S. Nuclear Regulatory Commission  
(301) 287-9259 | [Michelle.Albert@nrc.gov](mailto:Michelle.Albert@nrc.gov)

**From:** Mancini, Dominic J. EOP/OMB [mailto:(b)(6)]

**Sent:** Thursday, February 02, 2017 3:40 PM

**To:** [usdareg@obpa.usda.gov](mailto:usdareg@obpa.usda.gov); [amathew@doc.gov](mailto:amathew@doc.gov); [probbins@doc.gov](mailto:probbins@doc.gov); (b)(6);  
[joo.y.chung2.civ@mail.mil](mailto:joo.y.chung2.civ@mail.mil); [elizabeth.mcfadden@ed.gov](mailto:elizabeth.mcfadden@ed.gov); [Daniel.Cohen@hq.doe.gov](mailto:Daniel.Cohen@hq.doe.gov); [elizabeth.kohl@hq.doe.gov](mailto:elizabeth.kohl@hq.doe.gov);  
[Christopher.Kriva@hhs.gov](mailto:Christopher.Kriva@hhs.gov); [Madhura.Valverde@hhs.gov](mailto:Madhura.Valverde@hhs.gov); [Kenneth.Cohen@fda.hhs.gov](mailto:Kenneth.Cohen@fda.hhs.gov);  
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[jonathan.moss@dot.gov](mailto:jonathan.moss@dot.gov); [jbrown@usadf.gov](mailto:jbrown@usadf.gov)  
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EOP/OMB <(b)(6)>  
**Subject:** [External\_Sender] RE: Follow On Guidance on the Executive Order "Reducing Regulation and Controlling Regulatory Costs"

Dear Colleagues:

Several of you have requested a word version of this document, in order to facilitate comment. Please see the attached. Also, I am attaching a pdf version of the document we have made machine readable, and in which we have removed the 'DRAFT. DELIBERATIVE. PREDECISIONAL' header. We do intend to post this version on our public website.

Again, very much looking forward to your comments, and please let us know if you have any questions, thanks.

Best Regards,  
Dom

Dominic J Mancini  
Deputy and Acting Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

(b)(6)

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**From:** Mancini, Dominic J. EOP/OMB

**Sent:** Thursday, February 2, 2017 12:02 PM

**To:**

**Cc:** DL-OMB-OIRA <DL-OMB-OIRA@dsr.eop.gov>; DL-OMB-DADs <DL-OMB-DADs@dsr.eop.gov>; Theroux, Rich P. EOP/OMB <(b)(6)>

**Subject:** Follow On Guidance on the Executive Order "Reducing Regulation and Controlling Regulatory Costs"

Dear Colleagues,

Please see attached the first round of guidance on the January 30, 2017, Executive Order titled "Reducing Regulation and Controlling Regulatory Costs." For this interim guidance, OIRA is focusing on implementation of Section 2 of the Executive Order, which covers Fiscal Year 2017.

Note that we are requesting comment on this interim guidance. They should be provided to

(b)(6) by February 10, 2017. Our goal is to continue to answer your questions, and provide at least one further round of guidance, as we continue to implement the EO.

Please let Rich Theroux (b)(6) or me know if you have any questions.

Best Regards,  
Dom

Dominic J Mancini  
Deputy and Acting Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

(b)(6)



GRS\_Team

Delete



## ★ Questions on GRS 6.1



Stinson, Carol

11/30/16

Good afternoon, I am reaching out to you for assistance with interpreting GRS 6.1 – Email Managed under a Capstone Approach.

1. Can an agency use specific items of GRS 6.1, for example, only apply items 010 and 011?
2. Does an agency have to notify NARA if retentions will differ for the temporary records of Non-Capstone Individuals?
3. Does 6.1 apply to calendars and schedules for the Capstone officials?

Thank-you in advance for your assistance with this

Carol F. Stinson

Contractor, Records and Information Manager

OIS/PMPD/IPB

T5-F45

Office: 301-415-6183

[Carol.Stinson@nrc.gov](mailto:Carol.Stinson@nrc.gov)



Narick, Marianne

11/30/16

Why did you ask about calendars? Didn't you send me text from the GRS 6.1 that said calendars okay? Just curious.

*Marianne Narick*

Senior IT/IM Manager & IRM Team Lead

Office of the Chief Information Officer

US Nuclear Regulatory Commission

301-415-2175

**From:** Stinson, Carol  
**Sent:** Wednesday, November 30, 2016 2:44 PM  
**To:** GRS\_Team <[GRS\\_Team@nara.gov](mailto:GRS_Team@nara.gov)>  
**Cc:** Narick, Marianne <[Marianne.Narick@nrc.gov](mailto:Marianne.Narick@nrc.gov)>  
**Subject:** Questions on GRS 6.1

- show quoted text -



**Katherineene Kim**

12/1/16

Dear Ms. Stinson,

Thank you for contacting the GRS team. Responses in [blue](#)

1. Can an agency use specific items of GRS 6.1, for example, only apply items 010 and 011?

[Yes, an agency may use any or all of the items on GRS 6.1. If applying this GRS in part \(for example, only using item 011\), agencies must ensure that all other email records are covered by another NARA-approved disposition authority. Please see FAQ 17 on the attached FAQ.](#)

2. Does an agency have to notify NARA if retentions will differ for the temporary records of Non-Capstone Individuals?

[Items 011 and 012 \(temporary email\) give a minimum retention period. Both authorize agencies to retain emails longer if needed for business use.--not notification is required. If your agency needs a shorter retention period than outlined in item 011 and 012, an agency specific would be required.](#)

3. Does 6.1 apply to calendars and schedules for the Capstone officials?

[Only if your agency can not separate email records from these other affiliated records like calendars, appointments, tasks, and chats.](#)

Please let us know if you have any questions or need further clarification.

Thank you,

GRS Team

- show quoted text -



**Stinson, Carol**

12/1/16



Thank-you Ms. Kim for your prompt reply.

Carol

**From:** Katherene Kim [mailto:[katherene.kim@nara.gov](mailto:katherene.kim@nara.gov)]

**Sent:** Thursday, December 01, 2016 2:18 PM

**To:** GRS\_Team <[GRS\\_Team@nara.gov](mailto:GRS_Team@nara.gov)>

**Cc:** Narick, Marianne <[Marianne.Narick@nrc.gov](mailto:Marianne.Narick@nrc.gov)>; Stinson, Carol <[Carol.Stinson@nrc.gov](mailto:Carol.Stinson@nrc.gov)>

**Subject:** [External\_Sender] Re: Questions on GRS 6.1

- show quoted text -



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andrea.riley@nara.gov - [Switch accounts](#) - [Desktop](#)



NGC Log No: N6617-309  
Date Received: 4/5/17  
Date Due: 5/3/17  
Assigned To: \_\_\_\_\_

April 4, 2017

Melissa Golden, Lead Paralegal and FOIA Specialist  
Office of Legal Counsel, Department of Justice  
950 Pennsylvania Avenue, N.W.—Room 5511  
Washington, D.C. 20530-0001

Gary M. Stern, Chief FOIA Officer and General Counsel  
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**Re: Request Under Freedom of Information Act  
(Expedited Processing & Fee Waiver/Limitation Requested)**

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU")<sup>1</sup> submit this Freedom of Information Act request (the "Request") for records concerning the federal government's record retention policies, the use of private messaging applications by federal employees, and the free speech rights of federal employees.

**I. Background**

Record retention laws like the Freedom of Information Act, 5 U.S.C. § 552, the Presidential Records Act, 44 U.S.C. §2201, and the Federal Records Act, 44 U.S.C. § 3101, are important. They require the government to document its performance of official duties, and so make it possible for the public to hold the government to account. *See, e.g., Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171–72 (2004) (the citizens' ability "to know 'what their Government is up to' . . . should not be dismissed as a convenient formalism. It defines a structural necessity in a real democracy. . . The information belongs to citizens"); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (Congress enacted FOIA to "ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.").

History has shown that government officials on both sides of the aisle often fail to take this obligation seriously, particularly when it comes to records created with newer technology. Former White House Deputy Chief of Staff Karl Rove (along with approximately 50 other Bush administration staffers) used a non-government email account for official communications, and roughly 22 million e-mails from such accounts were deleted during the Bush administration instead of being archived in accordance with the law.<sup>2</sup> While serving as

<sup>1</sup> The American Civil Liberties Union Foundation is a 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about the civil rights and civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union is a separate non-profit, 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

<sup>2</sup> *See* Massimo Calabresi, *Inside the Bush E-Mail Scandal*, Time, Apr. 13, 2007, <http://content.time.com/time/nation/article/0,8599,1610414,00.html>; John Bresnahan, *White House E-mails from 2001-03 Deleted, but Rove Messages Kept from '05 On*, Politico, Apr. 12, 2007, <http://www.politico.com/blogs/politico-now/2007/04/white-house-e-mails-from-2001-03-deleted-but-rove-messages-kept-from-05-on-001007>; Dan Froomkin, *The Rovian Theory*, Wash.

Secretary of State, Hillary Clinton used a private email server for her emails, and deleted thousands of those emails because they were “private.”<sup>3</sup> Most recently, Vice President Mike Pence relied on a private email account for his work as governor of Indiana, and it was hacked.<sup>4</sup>

Each of these examples represents a failure to live up not only to legal obligations, but also to foundational principles of accountability and transparency. But attempts to crack down on public employee speech can also go too far: not every document created by a federal employee falls within the purview of the record retention laws. Individuals who take a job with the government do not thereby lose their First Amendment right to speak, on their own time, about matters that concern the public—or to do so using private email accounts and communication platforms.<sup>5</sup>

This means that government policy around record retention of employee communications must walk a fine line. Attempts to crack down on employee speech rights and legitimate whistleblowing cannot be dressed up as concerns about record retention.

Recently, the House Science Committee demanded an inquiry into the use of encryption by EPA employees,<sup>6</sup> and White House Press Secretary Sean Spicer reportedly conducted at least one random check of White House employees’ cellphones.<sup>7</sup>

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Post, March 23, 2007,  
[http://www.washingtonpost.com/wpdyn/content/blog/2007/03/23/BL2007032301067\\_pf.html](http://www.washingtonpost.com/wpdyn/content/blog/2007/03/23/BL2007032301067_pf.html).

<sup>3</sup> Chris Cillizza, *12 things I learned from the FBI report on Hillary Clinton's private email server*, Wash. Post, Sept. 2, 2016, [https://www.washingtonpost.com/news/the-fix/wp/2016/09/02/12-things-i-learned-from-the-fbi-report-on-hillary-clintons-private-email-server/?utm\\_term=.a9442a581d2d](https://www.washingtonpost.com/news/the-fix/wp/2016/09/02/12-things-i-learned-from-the-fbi-report-on-hillary-clintons-private-email-server/?utm_term=.a9442a581d2d); Paul Roderick Gregory, *Hillary Clinton's Emails: The Missing Point*, Forbes, July 9, 2016, <https://www.forbes.com/sites/paulroderickgregory/2016/07/09/its-the-30000-wiped-clean-clinton-e-mails/#1cf3b47c9a67>.

<sup>4</sup> Tony Cook, *Pence used personal email for state business—and was hacked*, Indy Star, Mar. 2, 2017, <http://www.indystar.com/story/news/politics/2017/03/02/pence-used-personal-email-state-business---and-hacked/98604904/>.

<sup>5</sup> See Esha Bhandari, *Government Employees Get to Have Opinions, Too*, ACLU, Jan. 25, 2017, <https://www.aclu.org/blog/speak-freely/government-employees-get-have-opinions-too>.

<sup>6</sup> Andrew Restuccia and Nancy Cook, *Trump Inspires Encryption Boom in Leaky D.C.*, POLITICO, Feb. 27, 2017, <http://politi.co/2mBfQoA>; Andrew Restuccia, *Conservatives demanding details on federal workers' encryption use*, POLITICO, Feb. 14, 2017, <http://politi.co/2mBgMsV>.

<sup>7</sup> Annie Karni and Alex Isenstadt, *Sean Spicer targets own staff in leak crackdown*, POLITICO, Feb. 26, 2017, <http://politi.co/2mBrwYD>.



As an initial matter, the focus on encrypted communications is misplaced. While ephemeral messaging applications may pose problems for record retention, the use of encrypted communications in transit is a practice to be encouraged, both inside and outside of the government.<sup>8</sup> It should not prevent the retention of records once they reach their destination, and instead makes the transmission of records more secure.

In contrast, the concerns raised by the recent surge in the use of ephemeral messaging applications by federal employees—including in the White House itself<sup>9</sup>—are legitimate, but official inquiries may cross the line into unacceptable clampdowns on speech. Many federal employees claim that they are using private messaging for personal communications only—for example, to arrange meetings outside of work time in private spaces—or to understand their rights as whistleblowers.<sup>10</sup>

Given the weight of the principles at stake and the confusion that abounds regarding how record retention policies apply to new technologies and personal communications,<sup>11</sup> the ACLU seeks to supplement the public record with official guidance regarding record retention. Through this request, the ACLU aims to facilitate the public's indispensable role in checking the power of our public officials and ensuring that federal agencies remain accountable to the public, while also protecting the free speech rights of federal employees.

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<sup>8</sup> Ed Felten, *On Encryption Apps in the White House*, FREEDOM TO TINKER, Feb. 27, 2017, <https://freedom-to-tinker.com/2017/02/27/on-encryption-apps-in-the-white-house/>.

<sup>9</sup> Individuals within the Environmental Protection Agency (“EPA”), the State Department, the Department of Homeland Security, and the Department of Transportation, as well as White House Press Secretary Sean Spicer and White House aide Hope Hicks have been identified as current or former users of confidential messaging applications. See, e.g., Ashley Parker and Philip Rucker, *Upheaval is Now Standard Operating Procedure Inside the White House*, WASH. POST, Feb. 13, 2017, <http://wapo.st/2mBcxh6>; Jonathan Swan and David McCabe, *Confide: The App for Paranoid Republicans*, AXIOS, Feb. 8, 2017, <https://www.axios.com/confide-the-new-app-for-paranoid-republicans-2246297664.html>; Andrew Restuccia et al., *Federal Workers Turn to Encryption to Thwart Trump*, POLITICO, Feb. 2, 2017, <http://politi.co/2mBa7z0>.

<sup>10</sup> See, e.g., Restuccia and Cook, *supra* note 6; Lily Hay Newman, *Encryption Apps Help White House Staffers Leak—And Maybe Break the Law*, WIRED, Feb. 15, 2017, <https://www.wired.com/2017/02/white-house-encryption-confide-app>; Andrew Restuccia et al., *supra* note 9.

<sup>11</sup> Brody Levesque, *Trump White House Staff Use of ‘Disappearing’ Messaging App Violates Presidential Records Act*, New Civil Rights Movement, Feb. 14, 2017, [http://www.thenewcivilrightsmovement.com/trump\\_staff\\_using\\_disappearing\\_messaging\\_app\\_which\\_violates\\_presidential\\_records\\_act](http://www.thenewcivilrightsmovement.com/trump_staff_using_disappearing_messaging_app_which_violates_presidential_records_act) (describing ignorance “run[ning] rampant” in the White House about what is permissible for staff communications).

## II. Requested Records

The ACLU seeks release of Records<sup>12</sup> created, enacted, or recirculated on or after November 9, 2016 concerning:

1. Interpretations of definitions and obligations related to record retention under the Presidential Records Act, 44 U.S.C. § 2201 *et seq.*, including but not limited to what constitutes a “presidential record” under the terms of the PRA;
2. Interpretations of definitions and obligations related to record retention under the Federal Records Act, 44 U.S.C. § 3101 *et seq.*;
3. Interpretations of definitions and obligations related to record retention under the Freedom of Information Act, 5 U.S.C. § 552;
4. Communications between the National Archivist, the President, members of Congress and/or agency heads concerning deleted records;
5. Guidance or guidelines issued to federal employees regarding:
  - a. Distinctions between official and personal communications, including but not limited to when a communication is considered subject to record retention rules;
  - b. The use of encryption for communication;
  - c. The use of messaging applications that default to deleting read messages or otherwise have the potential to obstruct official data retention; and
  - d. Any protections for communications used for whistleblowing.
6. Enforcement of any record-retention obligations under the PRA, FRA, FOIA, or other policies, including but not limited to records concerning disciplinary proceedings, internal audits and reviews, and compliance notices; and

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<sup>12</sup> For the purposes of this Request, “Records” are collectively defined to include, but are not limited to: e-mails; social-media posts; instructions; directives; guidance documents; formal and informal presentations; training documents; bulletins; alerts; updates; advisories; reports; legal and policy memoranda; contracts or agreements; minutes or notes of meetings and phone calls; memoranda; legal opinions; evaluations; memorializations; and guidelines.



7. Mr. Spicer's warning to White House employees that any use of encrypted messaging applications violates federal record retention obligations, including but not limited to any legal analysis conducted to support the warning.<sup>13</sup>

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the ACLU requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

### III. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).<sup>14</sup> There is a "compelling need" for these records, as defined in the statute, because the information requested is "urgen[tly]" needed by an organization primarily engaged in disseminating information "to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II).

- A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is "primarily engaged in disseminating information" within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>15</sup> Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU's work and are among its primary activities. *See ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" to be "primarily engaged in disseminating information").<sup>16</sup>

The ACLU regularly publishes *STAND*, a print magazine that reports on

<sup>13</sup> *See* Restuccia and Cook, *supra* note 6.

<sup>14</sup> *See also* 28 C.F.R. § 16.5(e).

<sup>15</sup> *See also* 28 C.F.R. § 16.5(e)(1)(ii).

<sup>16</sup> Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are "primarily engaged in disseminating information." *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

and analyzes civil liberties-related current events. The magazine is disseminated to over 620,000 people. The ACLU also publishes regular updates and alerts via email to approximately 2.15 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to 1.5 million social media followers (members and non-members). The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,<sup>17</sup> and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>18</sup>

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.<sup>19</sup> The ACLU also

<sup>17</sup> See, e.g., Press Release, American Civil Liberties Union, U.S. Releases Drone Strike 'Playbook' in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, Secret Documents Describe Graphic Abuse and Admit Mistakes (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>; Press Release, American Civil Liberties Union, Justice Department White Paper Details Rationale for Targeted Killing of Americans (Feb. 4, 2013), <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale-targeted-killing-americans>; Press Release, American Civil Liberties Union, Documents Show FBI Monitored Bay Area Occupy Movement (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>.

<sup>18</sup> See, e.g., Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About 'Torture' in Its Former Detention Program*, ABC, June 15, 2016, <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

<sup>19</sup> See, e.g., ACLU, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA's Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; ACLU, *Details Abound in Drone 'Playbook' – Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *ACLU-*

regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, [www.aclu.org](http://www.aclu.org). The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU’s website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

The ACLU website includes many features on information obtained through the FOIA.<sup>20</sup> For example, the ACLU’s “Predator Drones FOIA” webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU’s FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves. Similarly, the ACLU maintains an online “Torture Database,” a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated

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Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; ACLU, New NSA Documents Shine More Light into Black Box of Executive Order 12333 (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government’s “Suspicious Activity Report” Systems (Oct. 29, 2013), [https://www.aclu.org/sites/default/files/assets/eye\\_on\\_fbi\\_-\\_sars.pdf](https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf).

<sup>20</sup> *See, e.g.*, <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <https://www.aclu.org/cases/aclu-v-department-defense>; <https://www.aclu.org/mappingthefbi>; <https://www.aclu.org/cases/bagram-foia>; <https://www.aclu.org/national-security/csrt-foia>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <https://www.aclu.org/patriot-foia>; <https://www.aclu.org/nsi-documents-released-dod?redirect=cpreldirect/32088>.

searches of FOIA documents relating to government policies on rendition, detention, and interrogation.<sup>21</sup>

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA requests—the ACLU created an original chart that provides the public and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.<sup>22</sup> Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act<sup>23</sup>; a chart of original statistics about the Defense Department's use of National Security Letters based on its own analysis of records obtained through FOIA requests<sup>24</sup>; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.<sup>25</sup>

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The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

*B. The records sought are urgently needed to inform the public about actual or alleged government activity.*

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>26</sup> Specifically, as discussed in Part I, *supra*, release of the requested records would inform the public about the federal government's efforts to abide by its record retention obligations while also respecting the First Amendment rights of employees.

Given the foregoing, the ACLU has satisfied the requirements for expedited processing of this Request.

#### **IV. Application for Waiver or Limitation of Fees**

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<sup>21</sup> <https://www.thetorturedatabase.org>. *See also* <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

<sup>22</sup> [https://www.aclu.org/sites/default/files/pdfs/safe/free/olcmemos\\_2009\\_0305.pdf](https://www.aclu.org/sites/default/files/pdfs/safe/free/olcmemos_2009_0305.pdf).

<sup>23</sup> <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

<sup>24</sup> [https://www.aclu.org/sites/default/files/field\\_document/nsl\\_stats.pdf](https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf).

<sup>25</sup> <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

<sup>26</sup> *See also* 28 C.F.R. § 16.5(e)(1)(ii).

The ACLU requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure 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).<sup>27</sup> The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

*A. The Request 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 ACLU.*

As discussed above, news accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Especially because public officials appear to disagree on the legal reach of record retention obligations, the records sought are certain to contribute significantly to the public’s understanding of these issues.

The ACLU is not filing this Request to further its commercial interest. As described above, any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (quotation marks omitted)).

*B. The ACLU is a representative of the news media and the records are not sought for commercial use.*

The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that 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)(III)<sup>28</sup>; *see also Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding

<sup>27</sup> *See also* 28 C.F.R. § 16.10(k)(1).

<sup>28</sup> *See also* 28 C.F.R. § 16.10(b)(6).



aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Serv. Women’s Action Network v. DOD*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. DOJ*, No. C09-0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “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”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s to be “representatives of the news media” as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).<sup>29</sup>

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”<sup>30</sup> As was true in those instances, the ACLU meets the requirements for a fee waiver here.

<sup>29</sup> Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53–54.

<sup>30</sup> In May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the DOJ granted the ACLU a fee waiver with respect to the same request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request. In May 2005, the U.S.

\* \* \*

Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); 28 C.F.R. § 16.5(e).

If the Request is denied in whole or in part, the ACLU asks that you justify all deletions by reference to specific exemptions to the FOIA. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

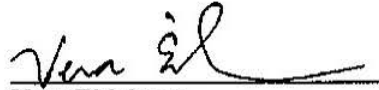
Thank you for your prompt attention to this matter. Please furnish the applicable records to:

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UNION FOUNDATION

Vera Eidelman  
Brennan Legal Fellow  
American Civil Liberties Union  
125 Broad Street—18th Floor  
New York, New York 10004  
veidelman@aclu.org

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Respectfully,



Vera Eidelman  
Brennan Legal Fellow  
Speech, Privacy, and Technology Project

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Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU on a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The DOJ did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the DOJ Office of Information and Privacy—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

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