

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ENVIRONMENTAL DEFENSE FUND,)	
)	
Plaintiff,)	Civil Action No.: 1:18-cv-7085
v.)	
)	
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY,)	COMPLAINT FOR DECLARATORY
)	AND INJUNCTIVE RELIEF
Defendant.)	
_____)	

INTRODUCTION

1. Plaintiff Environmental Defense Fund (“EDF”) brings this action to compel the U.S. Environmental Protection Agency (“EPA” or “Agency”) to release records withheld in violation of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. The records at issue could shed light on EPA’s decision to propose a rule that, if finalized, would drastically undermine the Agency’s ability to carry out its mission of protecting public health and the environment through sound science. *See* Strengthening Transparency in Regulatory Science, 83 Fed. Reg. 18,768 (proposed Apr. 30, 2018) (to be codified at 40 C.F.R. pt. 30) (“Proposed Rule”). EPA’s failure to release these records not only violates FOIA, but also deprives the public of important information that could reveal the impetus for the Proposed Rule and, thus, offer significant insight into EPA’s decision-making process. EPA’s failure to release the records at issue also frustrates the public’s ability to submit fully informed comments on the Proposed Rule before the comment period closes on August 16, 2018. Any further delay could prevent EDF and other interested parties from thoroughly evaluating and responding to subsequent actions pertaining to the Proposed Rule.

2. In March 2018, E&E News reported that then-EPA Administrator Scott Pruitt had announced plans to issue a proposed rule “widely expected to resemble” stalled legislative attempts to restrict the role of science in agency rulemaking. Scott Waldman & Robin Bravender, *Pruitt Is Expected to Restrict Science. Here’s What it Means*, E&E News (Mar. 16, 2018), <https://www.eenews.net/stories/1060076559.html>.

3. Within days of this report—on March 20, 2018—EDF submitted a FOIA request seeking records related to EPA’s consideration and implementation of ideas derived from or similar to unsuccessful legislation concerning EPA’s use of science. *See* Letter from Surbhi Sarang, EDF, to Nat’l Freedom of Info. Officer, EPA (Mar. 20, 2018) (“March FOIA Request”), attached as Exhibit 1.

4. On April 30, 2018, EPA published the Proposed Rule in the Federal Register. *See* 83 Fed. Reg. at 18,768. According to EPA, this rule would “preclude” the Agency from considering landmark studies assessing the health consequences—including risks to children—associated with exposure to particulate matter and lead. *Id.* at 18,769 n.3.

5. Shortly thereafter—on May 4, 2018—EDF submitted a second, more detailed FOIA request, also seeking records related to EPA’s consideration and implementation of unsuccessful legislation involving science. *See* Letter from Surbhi Sarang, EDF, to Nat’l Freedom of Info. Officer, EPA (May 4, 2018) (“May FOIA Request” or, together with the March FOIA Request, “FOIA Requests” or “Requests”), attached as Exhibit 2.

6. The statutory deadlines for EPA to respond to EDF’s FOIA Requests have come and gone, but EPA has thus far failed to release *any* responsive records. EDF is entitled to the immediate release of all non-exempt records responsive to its Requests.

PARTIES

7. Plaintiff ENVIRONMENTAL DEFENSE FUND is a 501(c)(3) non-profit organization headquartered in this judicial district at 257 Park Avenue South in Manhattan. Guided by science and economics, EDF has fought for over 50 years to find practical and lasting solutions to the most serious environmental problems. EDF was founded by scientists, and scientific integrity remains central to its strategies and objectives. Among other activities, EDF regularly uses FOIA to obtain information about government operations and activities that pose a threat to public health or the environment. EDF disseminates this information to the public—including EDF’s over 2 million members and supporters—through media campaigns, internet advocacy, and other effective communications strategies. As one of the world’s largest and most well-known environmental organizations, EDF frequently shares information and provides commentary at conferences, on radio and television, and in major newspapers nationwide.

8. Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY is a federal agency as defined in 5 U.S.C. §§ 551(1) and 552(f)(1). Congress has charged EPA with protecting human health and the environment by administering a number of federal laws—including the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001 *et seq.*; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*; and the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.* On information and belief, EPA has possession or control of the records EDF seeks.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (Federal question).

10. Venue is proper in this judicial district pursuant to 5 U.S.C. § 552(a)(4)(B) because EDF has its principal place of business within this district.

FACTUAL BACKGROUND

11. In March 2017, Representative Lamar Smith introduced the “Honest and Open New EPA Science Treatment Act of 2017” (“HONEST Act”) “[t]o prohibit the Environmental Protection Agency from proposing, finalizing, or disseminating regulations or assessments based upon science that is not transparent or reproducible.” H.R. 1430, 115th Cong. (1st Sess. 2017). In relevant part, the HONEST Act sought to preclude EPA from taking any of a wide range of actions “unless all scientific and technical information relied upon to support such action is . . . publicly available online in a manner that is sufficient for independent analysis and substantial reproduction of research results,” subject to limited exceptions. *Id.* § 2. Like previous legislative attempts to constrain EPA’s use of science, *see* H.R. 1030, 114th Cong. (1st Sess. 2015); H.R. 4012, 113th Cong. (2d. Sess. 2014), the HONEST Act failed to become law.

12. Approximately one month later, in April 2017, then-EPA Administrator Scott Pruitt met with Representative Smith to discuss the HONEST Act, as well as other unsuccessful science-related legislation. *See Who Is the E.P.A. Administrator Scott Pruitt Meeting With? A Detailed Schedule*, N.Y. Times 157 (Oct. 3, 2017), <https://www.nytimes.com/interactive/2017/10/03/us/politics/document-Pruitt-Sked-and-McCarthy-Sked.html>.

13. In January 2018, Pruitt and Smith met again. Juliet Eilperin & Brady Dennis, *Pruitt Unveils Controversial ‘Transparency’ Rule Limiting What Research EPA Can Use*, Wash.

Post (Apr. 24, 2018), <https://www.washingtonpost.com/news/energy-environment/wp/2018/04/24/pruitt-to-unveil-controversial-transparency-rule-limiting-what-research-epa-can-use/>. During this January meeting, “Smith made ‘his pitch that EPA internally implement the HONEST Act [so that] no regulation can go into effect unless the scientific data is publicly available for review.’” *Id.* (alteration in original) (quoting an internal agency email).

14. On March 16, 2018, E&E News reported that Pruitt intended to issue a proposed rule “widely expected to resemble” the HONEST Act. *See* Waldman & Bravender, *supra* ¶ 2.

15. On April 30, 2018, EPA published the Proposed Rule in the Federal Register. *See* 83 Fed. Reg. at 18,768. Like the HONEST Act, the Proposed Rule purports to enhance transparency and reproducibility. *See, e.g., id.* (“This document proposes a regulation intended to strengthen the transparency of EPA regulatory science.”); *id.* at 18,769 (“EPA . . . must . . . ensure that its decision-making is marked by independence, objectivity, transparency, clarity, and reproducibility.”). The Proposed Rule also echoes the HONEST Act by “direct[ing] EPA to ensure that the regulatory science underlying its actions is *publicly available in a manner sufficient for independent validation.*” *Id.* at 18,773 (emphasis added).

16. The Proposed Rule directs EPA to “ensure that the data and models underlying scientific studies that are pivotal to . . . regulatory action are available to the public.” *Id.* at 18,769. Previously, EPA had rejected this approach to increasing transparency, arguing that it would prohibit the Agency from considering relevant science—in part, because many public health studies rely on participants’ private medical information and other data that researchers cannot legally or ethically disclose. *See, e.g.,* National Ambient Air Quality Standards for Particulate Matter, 62 Fed. Reg. 38,652, 38,689 (July 18, 1997) (to be codified at 40 C.F.R. pt. 50) (“If EPA and other governmental agencies could not rely on published studies without

conducting an independent analysis of the enormous volume of raw data underlying them, then much plainly relevant scientific information would become unavailable to EPA for use in setting standards to protect public health and the environment. . . . [S]uch data are often the property of scientific investigators and are often not readily available because of . . . proprietary interests . . . or because of arrangements made to maintain confidentiality regarding personal health status and lifestyle information of individuals included in such data.”).

17. In introducing the Proposed Rule, EPA acknowledged that “courts have at times upheld EPA’s use [of] non-public data in support of its regulatory actions.” 83 Fed. Reg. at 18,769 n.3 (citing *Coal. of Battery Recyclers Ass’n. v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010); *Am. Trucking Ass’ns v. EPA*, 283 F.3d 355, 372 (D.C. Cir. 2002)). In support of this statement, EPA cited judicial decisions upholding actions taken in reliance on landmark studies assessing the health consequences—including risks to children—associated with exposure to particulate matter and lead. *Id.* EPA explained that the Proposed Rule would “preclude it from using such data in future regulatory actions.” *Id.*

18. EPA initially provided only a 30-day period for the public to comment on the Proposed Rule and did not schedule a public hearing. *See id.* at 18,768. EPA later extended the deadline for public comments until August 16, 2018. *Strengthening Transparency in Regulatory Science; Extension of Comment Period and Notice of Public Hearing*, 83 Fed. Reg. 24,255, 24,256 (May 25, 2018). EPA also announced that it would hold a public hearing on the Proposed Rule in Washington, D.C. on July 17, 2018. *Id.*

19. In June 2018, EPA’s own Science Advisory Board (“SAB”) complained that EPA had departed from its “usual process” in issuing the Proposed Rule. Letter from Dr. Michael Honeycutt, Chair, Sci. Advisory Bd., to Scott Pruitt, Administrator, Env’tl. Prot. Agency 2 (June

28, 2018), [https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/4ECB44CA28936083852582BB004ADE54/\\$File/EPA-SAB-18-003+Unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/4ECB44CA28936083852582BB004ADE54/$File/EPA-SAB-18-003+Unsigned.pdf). EPA typically provides the SAB with information about major actions *before* they are proposed, so that the SAB can assess the scientific and technical bases for those actions—and provide feedback to the Agency, as necessary. *Id.* In this situation, however, the SAB learned of the Proposed Rule only “through an April 25, 2018, press event and an April 30, 2018 *Federal Register* notice, as well as news articles.” *Id.*

20. The Proposed Rule and its political underpinnings have attracted significant public interest and media attention. *See, e.g.,* Lisa Friedman, *The E.P.A. Says It Wants to Research Transparency. Scientists See an Attack on Science.*, N.Y. Times (Mar. 26, 2018), <https://www.nytimes.com/2018/03/26/climate/epa-scientific-transparency-honest-act.html> (reporting that “[EPA] is considering a major change to the way it assesses scientific work, a move that would severely restrict the research available to it when writing environmental regulations” and explaining that “[t]he proposal is based on legislation named the Honest and Open New E.P.A. Science Treatment Act, also known as the Honest Act, a bill sponsored by Representative Lamar Smith”); Scott Waldman & Niina Heikkinen, *EPA: Smith Pitched Pruitt on ‘Secret Science.’ Now It’s Happening*, E&E News (Apr. 20, 2016), <https://www.eenews.net/stories/1060079655.html> (“EPA coordinated with House Republicans about their plans to restrict the science used in crafting regulations, newly released emails show.”).

LEGAL BACKGROUND

21. FOIA requires that “each agency . . . shall make . . . records promptly available to any person” upon receipt of a proper request, unless certain narrow exemptions to disclosure apply. 5 U.S.C. § 552(a)(3)(A).

22. Specifically, under FOIA and EPA's implementing regulations, EPA must determine whether to comply with a properly submitted FOIA request within 20 business days of receipt and must immediately notify the requester of its determination, along with the underlying reasons. *Id.* § 552(a)(6)(A)(i); 40 C.F.R. § 2.104(a) ("EPA offices will respond to requests no later than 20 working days from the date the request is received."). If the Agency determines not to comply with a properly submitted request, it must inform the requester of the right to appeal that adverse determination to the head of the Agency. 5 U.S.C. § 552(a)(6)(A)(i)(III)(aa).

23. In "unusual circumstances," EPA may extend the 20-day deadline for responding to a FOIA request for no more than ten additional business days by written notice to the requester. *Id.* § 552(a)(6)(B)(i); *see id.* § 552(a)(6)(B)(iii) (defining "unusual circumstances"). This written notice must set forth the unusual circumstances justifying the extension and specify the date on which the Agency will determine whether to comply with the request. *Id.* § 552(a)(6)(B)(i); *see also* 40 C.F.R. § 2.104(d) ("When the statutory time limits for processing a request cannot be met because of 'unusual circumstances,' . . . and the time limits are extended on that basis, you will be notified in writing, as soon as practicable, of the unusual circumstances and of the date by which processing of the request should be completed.").

24. If EPA fails to notify a FOIA requester before the statutory deadline of its determination about whether it will comply with a properly submitted request, the requester is deemed to have exhausted his or her administrative remedies and may immediately seek review in an appropriate district court. 5 U.S.C. § 552(a)(6)(C)(i), (a)(4)(B); *see* 40 C.F.R. § 2.104(a) ("If EPA fails to respond to your request within the 20 working day period . . . you may seek judicial review to obtain the records without first making an administrative appeal."). If the Agency is exercising due diligence in responding to the request and "exceptional circumstances"

apply, the court may retain jurisdiction and allow the Agency additional time to respond. 5 U.S.C. § 552(a)(6)(C)(i). A delay resulting from a “predictable agency workload of [FOIA] requests” generally does not qualify as an exceptional circumstance. *Id.* § 552(a)(6)(C)(ii).

PLAINTIFF’S FOIA REQUESTS AND EPA’S FAILURE TO RESPOND

EDF’s March FOIA Request

25. On March 20, 2018, EDF submitted the March FOIA Request to EPA by e-mail. *See* Ex. 1 at 1. This Request sought records “related to EPA’s consideration and implementation of ideas derived from or similar to unsuccessful House Committee on Science, Space, & Technology legislation concerning EPA’s use of science.” *Id.* Specifically, EDF requested “copies of correspondence that:

(1) contain any of the following terms:

- ‘secret science’
- ‘reproduc!’¹
- ‘HONEST Act’ or ‘Honest and Open New EPA Science Treatment Act’
- ‘replicat!’
- ‘computer codes’

(2) and has included among its sender(s) or recipient(s), or is in the custody of, any one or more of the following EPA employees:

- Jennifer Orme-Zavaleta
- Chris Robbins
- Bruce Rodan
- Richard Yamada
- Mary Ellen Radzikowski
- Thomas Sinks
- Jerry Blancato
- Clint Woods
- Bill Wehrum
- Ryan Jackson
- Byron Brown
- Nancy Beck
- Samantha Davis

¹ EDF explained that the symbol “!” is a “wildcard” intended to include all words that begin with the letters preceding the symbol. *See id.* at 2.

- Brittany Bolen
- Charlotte Bertrand
- E. Scott Pruitt[.]”

Id. at 1–2. EDF sought expedited processing and requested that EPA waive the search and production fees. *Id.* at 2–5.

26. On March 20, 2018, EPA confirmed receipt of the March FOIA Request and assigned the Request tracking number EPA-HQ-2018-005636. *See* E-mail from foia_hq@epa.gov to Surbhi Sarang, EDF (Mar. 20, 2018, 2:45 PM EST), attached as Exhibit 3.

27. On March 29, 2018, EPA informed EDF that “the total fees that would be incurred in processing this request do not meet the cost threshold and therefore [are] not billable.” *See* Letter from Larry F. Gottesman, EPA, to Surbhi Sarang, EDF 1 (Mar. 29, 2018), attached as Exhibit 4. In the same communication, EPA denied EDF’s request for expedited processing. *Id.* However, EPA explained that the March FOIA Request “will be processed as expeditiously as possible by the Office of Research and Development (ORD).” *Id.*

28. EPA’s response to EDF’s March FOIA Request was due 20 working days after receipt. Although EDF has engaged in multiple phone and email communications with ORD employees and other EPA representatives, EPA has not yet notified EDF of its determination as to whether it intends to comply with the FOIA Request or of the reasons for that determination, and it has not released any responsive records to date. *See* FOIAonline, EPA-HQ-2018-005636 Request Details, <https://www.foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=EPA-HQ-2018-005636&type=request> (last visited Aug. 7, 2018) (indicating that the March FOIA Request is at the “Assignment” stage and has not yet begun “Processing”), attached as Exhibit 5.

EDF's May FOIA Request

29. On May 4, 2018, EDF submitted the May FOIA Request to EPA through the Agency's "FOIAonline" application. *See* Ex. 2 at 1. Like the March FOIA Request, the May FOIA Request sought records "related to EPA's consideration and implementation of ideas derived from or similar to unsuccessful House Committee on Science, Space, & Technology legislation concerning EPA's use of science." *Id.* As compared to the March FOIA Request, however, the May FOIA Request extended the timeframe during which responsive records might have been created or modified, identified additional custodians, and provided an expanded list of relevant terms, including key phrases used in the Proposed Rule. *Id.* Specifically, EDF requested "copies of correspondence that:

(1) contain any of the following terms:

- 'secret science'
- 'reproduc!',² not including use of the term within the phrase 'no unauthorized reproductions of this document' or other similar standard disclaimers,
- 'HONEST Act' or 'Honest and Open New EPA Science Treatment Act'
- 'replicat!'
- 'computer codes'
- 'causa!'
- 'uncertain!'
- 'dose response'
- 'pivotal'
- 'significant regulatory decisions'
- 'transparen!'
- 'independent! validat!'

(2) and has included among its sender(s) or recipient(s), or is in the custody of, any one or more of the following EPA employees:

- Jennifer Orme-Zavaleta
- Chris Robbins
- Bruce Rodan
- Richard Yamada
- Mary Ellen Radzikowski

² As with the March FOIA Request, EDF explained that the symbol "!" is a "wildcard" intended to include all words that begin with the letters preceding the symbol. *See id.* at 2.

- Thomas Sinks
- Jerry Blancato
- Clint Woods
- Bill Wehrum
- Ryan Jackson
- Byron Brown
- Nancy Beck
- Samantha Davis
- Brittany Bolen
- Charlotte Bertrand
- E. Scott Pruitt
- Louis Anthony (Tony) Cox
- Drew Feeley
- Aaron Ringel[.]”

Id. at 1–2. EDF sought expedited processing and requested that EPA waive the search and production fees. *Id.* at 3–6.

30. On May 4, 2018, EPA confirmed receipt of the May FOIA Request and assigned the Request tracking number EPA-HQ-2018-007397. E-mail from foia_hq@epa.gov to Surbhi Sarang, EDF (May 4, 2018, 5:57 PM EST), attached as Exhibit 6.

31. On May 10, 2018, EPA granted EDF’s request for a fee waiver. *See* Letter from Larry F. Gottesman, EPA, to Surbhi Sarang, EDF 1 (May 10, 2018), attached as Exhibit 7. In the same communication, EPA denied EDF’s request for expedited processing. *Id.* However, EPA explained that the May FOIA Request “will be processed as expeditiously as possible by the Office of Research and Development (ORD).” *Id.*

32. EPA’s response to EDF’s May FOIA Request was due 20 working days after receipt. Although EDF has engaged in multiple phone and email communications with ORD employees and other EPA representatives, EPA has yet not notified EDF of its determination as to whether it intends to comply with the FOIA Request or of the reasons for that determination, and it has not released any responsive records to date. *See* FOIAonline, EPA-HQ-2018-007397 Request Details, <https://www.foiaonline.gov/foiaonline/action/public/submissionDetails?>

[trackingNumber=EPA-HQ-2018-007397&type=request](#) (last visited Aug. 7, 2018) (indicating that the May FOIA Request is at the “Assignment” stage and has not yet begun “Processing”), attached as Exhibit 8.

* * *

33. EDF reasonably believes that non-exempt records responsive to the FOIA Requests could shed light on EPA’s decision to issue the Proposed Rule. The period in which EPA will accept public comments on the rule will close on August 16, 2018—and EPA could finalize the rule at any point thereafter. As a result of EPA’s failure to comply with FOIA’s statutory deadlines, EDF recognizes that it might not receive responsive records before the comment period expires. Nonetheless, EDF believes that these records will help to inform ongoing review of the Proposed Rule. EDF, its members and supporters, and the public at large may also rely on responsive records in evaluating and responding to EPA’s subsequent actions pertaining to the rule. Accordingly, EDF respectfully requests that this Court order EPA to release the requested records within 20 business days of the Court’s Order granting EDF’s requested relief.

CLAIM FOR RELIEF

1. Under FOIA, Plaintiff has a statutory right to obtain all non-exempt records responsive to its request.

2. EPA failed to respond to Plaintiff’s Requests within 20 days. To date, EPA has not notified Plaintiff of its determinations as to whether it intends to comply with Plaintiff’s properly submitted FOIA Requests, in violation of FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

3. EPA failed to make all non-exempt responsive records promptly available to Plaintiff, in violation of FOIA, 5 U.S.C. § 552(a)(3)(A).

REQUEST FOR RELIEF

Plaintiff respectfully requests that this Court enter an Order:

1. Declaring, pursuant to 28 U.S.C. § 2201, that EPA violated FOIA by failing to notify Plaintiff of EPA's determinations about whether to comply with Plaintiff's properly submitted FOIA Requests, along with the reasons for those determinations, before the statutory deadline;
2. Declaring, pursuant to 28 U.S.C. § 2201, that EPA violated FOIA by failing to make the requested records promptly available to Plaintiff;
3. Ordering EPA, pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 2202, to release the requested records to Plaintiff within 20 business days of the Court's Order;
4. Ordering EPA, pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 2202, to produce an index identifying any responsive records or parts thereof that it decides to withhold from disclosure, along with the specific statutory exemption claimed;
5. Retaining jurisdiction over this case to rule on any assertion by EPA that certain responsive records are exempt from disclosure;
6. Awarding Plaintiff its reasonable attorney fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and
7. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted this 7th day of August 2018.

/s/Alexis Andiman

ALEXIS ANDIMAN
Earthjustice
48 Wall Street, 19th Floor
New York, NY 10005
Tel.: (212) 845-7376
aandiman@earthjustice.org

CARRIE APFEL*
Earthjustice
1625 Massachusetts Avenue, N.W., Suite 702
Washington, D.C. 20036
capfel@earthjustice.org

SURBHI SARANG*
Environmental Defense Fund
1875 Connecticut Avenue, N.W., Suite 600
Washington, D.C. 20009
ssarang@edf.org

* Application for admission *pro hac vice* pending

Counsel for Plaintiff

Exhibit 1



March 20, 2018

**SUBMITTED VIA EMAIL TO HQ.FOIA@EPA.GOV
HARD COPY TO FOLLOW BY U.S. MAIL**

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

Re: Freedom of Information Act Request for Records Regarding EPA Adoption of Unsuccessful Anti-Science Legislation

Dear National Freedom of Information Officer:

Environmental Defense Fund (“EDF”) respectfully requests records, as that term is defined at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act (“FOIA”), of the U.S. Environmental Protection Agency (“EPA” or the “Agency”), related to EPA’s consideration and implementation of ideas derived from or similar to unsuccessful House Committee on Science, Space, & Technology legislation concerning EPA’s use of science.

Specifically, EDF requests copies of correspondence that:

(1) contain any of the following terms:

- “secret science”
- “reproduc!”
- “HONEST Act” or “Honest and Open New EPA Science Treatment Act”
- “replicat!”
- “computer codes”

(2) and has included among its sender(s) or recipient(s), or is in the custody of, any one or more of the following EPA employees:

- Jennifer Orme-Zavaleta
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- Thomas Sinks
- Jerry Blancato
- Clint Woods
- Bill Wehrum
- Ryan Jackson
- Byron Brown
- Nancy Beck
- Samantha Dravis
- Brittany Bolen
- Charlotte Bertrand
- E. Scott Pruitt

Please note that the use of “!” above is a wildcard intended to include all words that begin with the letters that precede it.

EDF requests records that were produced, modified, or transmitted between October 1, 2017 and the date that EPA begins searching for records responsive to this request. The requested records specifically include, but are not limited to, hard-copy correspondence and electronic correspondence such as emails, text messages, and correspondence transmitted through any other electronic platform. This request specifically includes any attachments to responsive records.

If any of the information sought in this request is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

Request for Expedited Processing

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 40 C.F.R. § 2.104(e)(1)(ii), which applies when there is “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” With respect to five other FOIA requests, EPA has recognized EDF’s eligibility for expedited processing on this basis.¹ In support of this request for expedited processing, I certify that the following information is true and correct to the best of my knowledge and belief:

- (1) EDF engages in extensive, daily efforts to inform the public about matters

¹ See Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-003545 (Feb. 23, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-005587 (Apr. 12, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-008622 (July 7, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009283 (July 13, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009579 (July 26, 2017).

involving environmental policy. For example, EDF has multiple channels for distributing information to the public, including through direct communication with its more than 2 million members, press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets.²

(2) On October 31, 2017, EPA Administrator Scott Pruitt announced a new policy dictating selection criteria for EPA's federal advisory committees that instituted a requirement "that no member of an EPA federal advisory committee be currently in receipt of EPA grants, either as principal investigator or co-investigator, or in a position that would otherwise reap substantial direct benefit from an EPA grant."³ This directive was widely reported on by the media.⁴

(3) EPA's federal advisory committees serve critical functions ensuring that EPA pursues research activities,⁵ grounds its decisions in science, and has access to technical expertise to set standards that protect human health and the environment.⁶ The scientific community has suggested that this science advisory board directive may have severe implications for the quality of scientific expertise that EPA receives by eliminating scientists whom EPA deemed worthy of receiving grants and replacing them with

² See, e.g., Diane Regas, *EPA's science is under attack: What you need to know*, EDF Blogs (Nov. 3, 2017), <https://www.edf.org/blog/2017/11/03/epas-science-under-attack-what-you-need-know>; Jennifer McPartland, *EPA is undermining the science that helps protect us from pollutants*, The Hill (Mar. 13, 2018), <http://thehill.com/opinion/energy-environment/378148-epa-is-undermining-the-science-that-helps-protect-us-from>.

³ EPA Administrator Scott Pruitt, *Strengthening and Improving Membership on EPA Federal Advisory Committees* (Oct. 31, 2017).

⁴ See, e.g., Lisa Friedman, *Pruitt Bars Some Scientists From Advising E.P.A.*, N.Y. Times (Oct. 31, 2017), <https://www.nytimes.com/2017/10/31/climate/pruitt-epa-science-advisory-boards.html>; Juliet Eilperin, *EPA's new science advisers add more industry experts, conservatives to the mix*, The Washington Post (Nov. 4, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/11/04/pruitts-new-science-advisers-add-more-industry-experts-conservatives-to-the-mix/?utm_term=.3bcb27863145; Jennifer McPartland, Juleen Lam, and Timothy Malloy, *Why we will choose public service over politics in the Pruitt EPA*, The Hill (Jan. 30, 2018), <http://thehill.com/opinion/energy-environment/371469-why-we-will-choose-public-service-over-politics-in-the-pruitt-epa>; Suzy Khimm & Andrew Rafferty, *Pruitt Makes EPA Science Board More Industry Friendly*, NBC News (Nov. 3, 2017), <https://www.nbcnews.com/politics/white-house/pruitt-makes-epa-science-board-more-industry-friendly-n817276>; Warren Cornwall, *Trump's EPA has blocked agency grantees from serving on science advisory panels. Here is what it means*, Science (Oct. 31, 2017), <http://www.sciencemag.org/news/2017/10/trump-s-epa-has-blocked-agency-grantees-serving-science-advisory-panels-here-what-it>.

⁵ See EPA, *About the Board of Scientific Counselors (BOSC)*, <https://www.epa.gov/bosc>.

⁶ See, e.g., EPA, *About the Science Advisory Board (SAB) and the SAB Staff Office*, <https://www.epa.gov/aboutepa/about-science-advisory-board-sab-and-sab-staff-office> ("A key priority for EPA is to base Agency actions on sound scientific data, analyses, and interpretations. The SAB provides a mechanism for the Agency to receive peer review and other advice designed to make a positive difference in the production and use of science at EPA.")

potentially less qualified individuals, including industry-affiliated representatives more likely to have conflicts of interests.⁷

(4) This directive in large part implements a piece of legislation, The EPA Science Advisory Board Reform Act (H.R. 1431), that has been repeatedly introduced in Congress, without success.⁸ This controversial bill would similarly prevent current EPA grant recipients from serving on EPA's Science Advisory Board and prevent them from applying for new EPA grants or contracts for three years following the end of their term.⁹

(5) Administrator Pruitt's schedule records an April 5, 2017 meeting with Lamar Smith, Chairman of the House Science Committee and sponsor of the EPA Science Advisory Board Reform Act bill, to discuss this bill and the HONEST Act (H.R. 1430), another Smith-sponsored bill targeted at EPA's use of science.¹⁰ This meeting further suggests that Administrator Pruitt may have been influenced by the EPA Science Advisory Board Reform Act in issuing the science advisory board directive.

(6) A recent article reported that Administrator Pruitt spoke at the Heritage Foundation about instituting science reforms at the agency that would "require EPA — when issuing rules — to rely only on scientific studies where the underlying data are made public."¹¹ This requirement appears to closely reflect aspects of Rep. Lamar Smith's HONEST Act. These comments suggest that Administrator Pruitt may be considering issuing a directive to implement provisions of the HONEST Act as he has done with the EPA Science Advisory Board Reform Act. According to the article, the issuance of such a directive could be imminent.

(7) The HONEST Act (H.R. 1430), previously known as the Secret Science Reform Act, has been criticized for the limitations it would place on the science EPA is able to

⁷ Michael Halpern, *The EPA Science Advisory Board Is Being Compromised. Here's Why That Matters.*, Union of Concerned Scientists Blog (Oct. 30, 2017), <https://blog.ucsusa.org/michael-halpern/the-epa-science-advisory-board-is-being-compromised-heres-why-that-matters>.

⁸ Michael Halpern, *EPA Administrator Scott Pruitt Accelerates Politicization of Agency's Science Advisory Board*, Union of Concerned Scientists Blog (Oct. 17, 2017), <https://blog.ucsusa.org/michael-halpern/epa-administrator-scott-pruitt-accelerates-politicization-of-science-advisory-board>.

⁹ David Henry, *House approves EPA science committee overhaul*, The Hill (Mar. 30, 2017), <http://thehill.com/policy/energy-environment/326472-house-approves-epa-science-committee-overhaul> ("Democrats broadly opposed Lucas's bill, saying its requirements would undermine EPA's research by allowing more industry influence over the scientific process.")

¹⁰ Michael Halpern, *EPA Administrator Scott Pruitt Accelerates Politicization of Agency's Science Advisory Board*, Union of Concerned Scientists Blog (Oct. 17, 2017), <https://blog.ucsusa.org/michael-halpern/epa-administrator-scott-pruitt-accelerates-politicization-of-science-advisory-board>; N.Y. Times, *Who Is the E.P.A. Administrator Scott Pruitt Meeting With? A Detailed Schedule* (Oct. 3, 2017), https://www.nytimes.com/interactive/2017/10/03/us/politics/document-Pruitt-Sked-and-McCarthy-Sked.html?_r=0.

¹¹ Scott Waldman & Robin Bravender, *Pruitt is expected to restrict science. Here's what it means*. E&E News (Mar. 16, 2018), <https://www.eenews.net/climatewire/2018/03/16/stories/1060076559>.

use.¹² The scientific community has raised concerns that if the provisions in the HONEST Act were implemented at EPA, the agency would risk having to exclude sound science from its decision-making, undermining the scientific robustness of EPA's decisions.

(8) The records requested here are necessary to shed light on whether EPA is considering implementing the HONEST Act or other policies taken from House Science Committee legislation. The public needs to know whether Administrator Pruitt is considering actions to hinder EPA from relying on sound science, as well as the basis underlying any such potential decisions. Given the importance of these issues for all aspects of EPA decision-making, as well as the potentially imminent release of a policy directive, expedited processing is appropriate.

Request for Fee Waiver

As a non-partisan, non-profit organization that provides information that is in the public interest, EDF respectfully requests a waiver of fees associated with this request. As explained above, the subject of this request concerns Administrator Pruitt's consideration of new science policies at EPA, and thus clearly concerns government operations and activities. The public currently has limited information about how and whether EPA intends to change its policies with regards to using science, and the requested records will shed light on whether EPA is considering such policies, the substance of such changes, and how such decisions have been developed. Thus, the requested information is likely to contribute to an understanding of government operations and activity.

EDF is well positioned to disseminate the records to the public, as we routinely issue press releases, action alerts, reports, analyses, and other public outreach materials. We fully intend to disseminate newsworthy information received in response to this request. Additionally, as a science-driven organization with dozens of scientists on staff, EDF has relevant expertise to help facilitate public outreach on these issues. Thus, disclosure of the information will contribute to the general public's understanding. The contribution of the requested information to the general public's understanding will further be significant because EDF plans on widely disseminating records received from this request and informing the public about any potential science policies being considered at EPA, of which the public currently has limited awareness.

Thus, 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 we additionally are not seeking information for any commercial purpose. 5 U.S.C.

§ 552(a)(4)(A)(iii). Accordingly, we respectfully request that the documents be furnished without charge. 5 U.S.C. § 552(a)(4)(A)(iii).

¹² A. A. Rosenberg et. al., *Congress's attacks on science-based rules*, 348 Science 946-966 (29 May 2015), <http://science.sciencemag.org/content/348/6238/964.full?ijkey=mj/ZsX4l7WWEU&keytype=ref&siteid=sci> (this legislation would "limit the information that regulators can use" and "drain time and resources from rule-making processes"). See also Congressional Budget Office Cost Estimate, H.R. 1030 Secret Science Reform Act of 2015, March 11, 2015, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1030.pdf>.

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event EDF's request for a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at 202-572-3526 or by email at ssarang@edf.org.

Respectfully submitted,

Surbhi Sarang
Environmental Defense Fund
1875 Connecticut Avenue, NW
Suite 600
Washington, DC 20009

Exhibit 2



May 4, 2018

SUBMITTED VIA FOIAonline

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

Re: Freedom of Information Act Request for Records Regarding EPA Adoption of Unsuccessful Anti-Science Legislation

Dear National Freedom of Information Officer:

Environmental Defense Fund (“EDF”) respectfully requests records, as that term is defined at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act (“FOIA”), of the U.S. Environmental Protection Agency (“EPA” or the “Agency”), related to EPA’s consideration and implementation of ideas derived from or similar to unsuccessful House Committee on Science, Space, & Technology legislation concerning EPA’s use of science.

Specifically, EDF requests copies of correspondence that:

(1) contain any of the following terms:

- “secret science”
- “reproduc!,” not including use of the term within the phrase “no unauthorized reproductions of this document” or other similar standard disclaimers,
- “HONEST Act” or “Honest and Open New EPA Science Treatment Act”
- “replicat!”
- “computer codes”
- “causa!”
- “uncertain!”
- “dose response”
- “pivotal”
- “significant regulatory decisions”
- “transparen!”
- “independent! validat!”

(2) and has included among its sender(s) or recipient(s), or is in the custody of, any one or more of the following individuals:

- Jennifer Orme-Zavaleta
- Chris Robbins
- Bruce Rodan
- Richard Yamada
- Mary Ellen Radzikowski
- Thomas Sinks
- Jerry Blancato
- Clint Woods
- Bill Wehrum
- Ryan Jackson
- Byron Brown
- Nancy Beck
- Samantha Dravis
- Brittany Bolen
- Charlotte Bertrand
- E. Scott Pruitt
- Louis Anthony (Tony) Cox
- Drew Feeley
- Aaron Ringel

Please note that the use of “!” above is a wildcard intended to include all words that begin with the letters that precede it.

On March 20, 2018, EDF submitted a separate FOIA request seeking correspondence relating to EPA adoption of unsuccessful anti-science legislation. This earlier request, which EPA docketed as number EPA-HQ-2018-005636, covered records that were produced, modified, or transmitted between October 1, 2017 and the date that EPA began searching for records responsive to that request.

This new request covers records produced, modified, or transmitted from October 1, 2017 through the date upon which EPA begins searching for records responsive to this request, excluding any records already covered by the March 20 request (EPA-HQ-2018-005636). If any record covered by the March 20 request was subsequently modified or transmitted, such modification or transmission qualifies as a separate record for the purposes of this request, and should therefore be included among the responsive records. This request does not modify—and should not affect the processing of—the March 20 request.

The requested records specifically include, but are not limited to, hard-copy correspondence and electronic correspondence such as emails, text messages, and correspondence transmitted through any other electronic platform. This request specifically includes any attachments to responsive records.

If any of the information sought in this request is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each such

record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

Request for Expedited Processing

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 40 C.F.R. § 2.104(e)(1)(ii), which applies when there is “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” With respect to five other FOIA requests, EPA has recognized EDF’s eligibility for expedited processing on this basis.¹ In support of this request for expedited processing, I certify that the following information is true and correct to the best of my knowledge and belief:

- (1) EDF engages in extensive, daily efforts to inform the public about matters involving environmental policy. For example, EDF has multiple channels for distributing information to the public, including through direct communication with its more than 2 million members, press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets.²
- (2) On October 31, 2017, EPA Administrator Scott Pruitt announced a new policy dictating selection criteria for EPA’s federal advisory committees that instituted a requirement “that no member of an EPA federal advisory committee be currently in receipt of EPA grants, either as principal investigator or co-investigator, or in a position that would otherwise reap substantial direct benefit from an EPA grant.”³ This directive was widely reported on by the media.⁴

¹ See Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-003545 (Feb. 23, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-005587 (Apr. 12, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-008622 (July 7, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009283 (July 13, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009579 (July 26, 2017).

² See, e.g., Diane Regas, *EPA’s science is under attack: What you need to know*, EDF Blogs (Nov. 3, 2017), <https://www.edf.org/blog/2017/11/03/epas-science-under-attack-what-you-need-know>; Jennifer McPartland, *EPA is undermining the science that helps protect us from pollutants*, The Hill (Mar. 13, 2018), <http://thehill.com/opinion/energy-environment/378148-epa-is-undermining-the-science-that-helps-protect-us-from>.

³ EPA Administrator Scott Pruitt, *Strengthening and Improving Membership on EPA Federal Advisory Committees* (Oct. 31, 2017).

⁴ See, e.g., Lisa Friedman, *Pruitt Bars Some Scientists From Advising E.P.A.*, N.Y. Times (Oct. 31, 2017), <https://www.nytimes.com/2017/10/31/climate/pruitt-epa-science-advisory-boards.html>; Juliet Eilperin, *EPA’s new science advisers add more industry experts, conservatives to the mix*, The Washington Post (Nov. 4, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/11/04/pruitts-new-science-advisers-add-more-industry-experts-conservatives-to-the-mix/?utm_term=.3bcb27863145; Jennifer McPartland, Juleen Lam, and Timothy Malloy, *Why we will choose public service over politics in the Pruitt EPA*, The Hill (Jan. 30, 2018), <http://thehill.com/opinion/energy-environment/371469-why-we-will-choose-public-service-over-politics-in-the-pruitt-epa>; Suzy Khimm & Andrew Rafferty, *Pruitt Makes EPA Science Board More Industry Friendly*, NBC News (Nov. 3, 2017), <https://www.nbcnews.com/politics/white-house/pruitt-makes-epa-science-board-more-industry-friendly->

- (3) EPA’s federal advisory committees serve critical functions ensuring that EPA pursues research activities,⁵ grounds its decisions in science, and has access to technical expertise to set standards that protect human health and the environment.⁶ The scientific community has suggested that this science advisory board directive may have severe implications for the quality of scientific expertise that EPA receives by eliminating scientists whom EPA deemed worthy of receiving grants and replacing them with potentially less qualified individuals, including industry-affiliated representatives more likely to have conflicts of interests.⁷
- (4) This directive in large part implements a piece of legislation, The EPA Science Advisory Board Reform Act (H.R. 1431), that has been repeatedly introduced in Congress, without success.⁸ This controversial bill would similarly prevent current EPA grant recipients from serving on EPA’s Science Advisory Board and prevent them from applying for new EPA grants or contracts for three years following the end of their term.⁹
- (5) Administrator Pruitt’s schedule records an April 5, 2017 meeting with Lamar Smith, Chairman of the House Science Committee and sponsor of the EPA Science Advisory Board Reform Act bill, to discuss this bill and the HONEST Act (H.R. 1430), another Smith-sponsored bill targeted at EPA’s use of science.¹⁰ This meeting further suggests that Administrator Pruitt may have been influenced by the EPA Science Advisory Board Reform Act in issuing the science advisory board directive.

[n817276](#); Warren Cornwall, *Trump’s EPA has blocked agency grantees from serving on science advisory panels. Here is what it means.* Science (Oct. 31, 2017), <http://www.sciencemag.org/news/2017/10/trump-s-epa-has-blocked-agency-grantees-serving-science-advisory-panels-here-what-it>.

⁵ See EPA, About the Board of Scientific Counselors (BOSC), <https://www.epa.gov/bosc>.

⁶ See, e.g., EPA, *About the Science Advisory Board (SAB) and the SAB Staff Office*,

<https://www.epa.gov/aboutepa/about-science-advisory-board-sab-and-sab-staff-office> (“A key priority for EPA is to base Agency actions on sound scientific data, analyses, and interpretations. The SAB provides a mechanism for the Agency to receive peer review and other advice designed to make a positive difference in the production and use of science at EPA.”)

⁷ Michael Halpern, *The EPA Science Advisory Board Is Being Compromised. Here’s Why That Matters.*, Union of Concerned Scientists Blog (Oct. 30, 2017), <https://blog.ucsusa.org/michael-halpern/the-epa-science-advisory-board-is-being-compromised-heres-why-that-matters>.

⁸ Michael Halpern, *EPA Administrator Scott Pruitt Accelerates Politicization of Agency’s Science Advisory Board*, Union of Concerned Scientists Blog (Oct. 17, 2017), <https://blog.ucsusa.org/michael-halpern/epa-administrator-scott-pruitt-accelerates-politicization-of-science-advisory-board>.

⁹ David Henry, *House approves EPA science committee overhaul*, The Hill (Mar. 30, 2017), <http://thehill.com/policy/energy-environment/326472-house-approves-epa-science-committee-overhaul> (“Democrats broadly opposed Lucas’s bill, saying its requirements would undermine EPA’s research by allowing more industry influence over the scientific process.”)

¹⁰ Michael Halpern, *EPA Administrator Scott Pruitt Accelerates Politicization of Agency’s Science Advisory Board*, Union of Concerned Scientists Blog (Oct. 17, 2017), <https://blog.ucsusa.org/michael-halpern/epa-administrator-scott-pruitt-accelerates-politicization-of-science-advisory-board>; N.Y. Times, *Who Is the E.P.A. Administrator Scott Pruitt Meeting With? A Detailed Schedule* (Oct. 3, 2017), https://www.nytimes.com/interactive/2017/10/03/us/politics/document-Pruitt-Sked-and-McCarthy-Sked.html?_r=0.

- (6) A March 2018 article reported that Administrator Pruitt spoke at the Heritage Foundation about instituting science reforms at the agency that would closely reflect aspects of Rep. Lamar Smith's HONEST Act. Documents released under a separate FOIA request show that Rep. Lamar Smith was in contact with Administrator Pruitt about the HONEST Act and proposed to him that EPA internally implement portions of the HONEST Act.¹¹
- (7) The HONEST Act (H.R. 1430), previously known as the Secret Science Reform Act, has been criticized for the limitations it would place on the science EPA is able to use.¹² The scientific community has raised concerns that if the provisions in the HONEST Act were implemented at EPA, the agency would risk having to exclude sound science from its decision-making, undermining the scientific robustness of EPA's decisions.
- (8) On April 30, 2018, EPA published in the Federal Register notice of a proposed rule that would restrict EPA's ability to rely on well-established science.¹³ Despite the fact that this proposed rule would have far-reaching implications by limiting EPA's ability to rely on science as it takes actions to protect human health and the environment, the period for public comment on this proposed rule is woefully short. EPA has allowed only 30 days from publication of the Federal Register notice, setting the comment deadline as May 30, 2018.¹⁴
- (9) The records requested here are necessary to increase transparency around the basis and development of this proposed rule, which appears to have originated through meetings with external parties about which there is limited public information. Moreover, the administrative record for this rulemaking does not include any information on important impacts of this proposed rule, including implications for the number and type of studies relied upon by EPA in different contexts, or the costs that this rule would impose on the agency and researchers. The lack of transparency around the development of this proposal, and the lack of a fully developed record, inhibits the public's ability to provide informed comment. As members of the public develop comments on the proposed rule, it is essential that the relevant public records be made available so that comments can be informed by these records. Given the potential of this rule to impact EPA's ability to set life-saving protective standards and the impending May 30 comment deadline, there is an urgency to inform the public and expedited processing is appropriate in this case.

Request for Fee Waiver

As a non-partisan, non-profit organization that provides information that is in the public interest,

¹¹ Scott Waldman and Nina Heikkinen, *Smith pitched Pruitt on 'secret science.' Now it's happening*, E&E News (Apr. 20, 2018), <https://www.eenews.net/stories/1060079655>.

¹² A. A. Rosenberg et. al., *Congress's attacks on science-based rules*, 348 Science 946-966 (29 May 2015), <http://science.sciencemag.org/content/348/6238/964.full?ijkey=mj/ZsX4l7WWEU&keytype=ref&siteid=sci> (this legislation would "limit the information that regulators can use" and "drain time and resources from rule-making processes"). See also Congressional Budget Office Cost Estimate, H.R. 1030 Secret Science Reform Act of 2015, March 11, 2015, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1030.pdf>.

¹³ *Strengthening Transparency in Regulatory Science*, 83 Fed. Reg. 18, 768 (Apr. 30, 2018).

¹⁴ *Strengthening Transparency in Regulatory Science*, 83 Fed. Reg. 18, 768 (Apr. 30, 2018).

EDF respectfully requests a waiver of fees associated with this request. As explained above, the subject of this request concerns Administrator Pruitt's consideration of new science policies at EPA, and thus clearly concerns government operations and activities. The public currently has limited information about the basis of EPA's proposed rule and whether it is contemplating additional changes in policies with regards to using science, and the requested records will shed light on the substance of any changes and how such decisions have been developed. Thus, the requested information is likely to contribute to an understanding of government operations and activity.

EDF is well positioned to disseminate the records to the public, as we routinely issue press releases, action alerts, reports, analyses, and other public outreach materials. We fully intend to disseminate newsworthy information received in response to this request. Additionally, as a science-driven organization with dozens of scientists on staff, EDF has relevant expertise to help facilitate public outreach on these issues. Thus, disclosure of the information will contribute to the general public's understanding. The contribution of the requested information to the general public's understanding will further be significant because EDF plans on widely disseminating records received from this request and informing the public about any potential science policies being considered at EPA, of which the public currently has limited awareness.

Thus, 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 we additionally are not seeking information for any commercial purpose. 5 U.S.C. § 552(a)(4)(A)(iii). Accordingly, we respectfully request that the documents be furnished without charge. 5 U.S.C. § 552(a)(4)(A)(iii).

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event EDF's request for a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at 202-572-3526 or by email at ssarang@edf.org.

Respectfully submitted,

Surbhi Sarang
Environmental Defense Fund
1875 Connecticut Avenue, NW
Suite 600
Washington, DC 20009

Exhibit 3

Surbhi Sarang

From: foia_hq@epa.gov
Sent: Tuesday, March 20, 2018 2:45 PM
To: Surbhi Sarang
Subject: FOIA Request EPA-HQ-2018-005636 Submitted

Follow Up Flag: Follow up
Flag Status: Flagged

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: EPA-HQ-2018-005636
- Requester Name: Surbhi Sarang
- Date Submitted: 03/20/2018
- Request Status: Submitted
- Description: Requesting records regarding EPA adoption of unsuccessful anti-science legislation.

Exhibit 4



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENVIRONMENTAL INFORMATION

MAR 29 2018

Ms. Surbhi Sarang
Environmental Defense Fund
1875 Connecticut Avenue, NW
Washington, DC 20009

Re: Freedom of Information Act Request – EPA-HQ-2018-005636

Dear Ms. Sarang:

This is in response to your request for a fee waiver in connection with your Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency (EPA) seeking records regarding EPA adoption of unsuccessful anti-science legislation.

Based upon a review of your request and the information available to us at this time, we have determined that the total fees that would be incurred in processing this request do not meet the cost threshold and therefore not billable. The Office of Research and Development (ORD) will respond to your request for information.

Your request for expedited processing was evaluated as to whether there is an urgency to inform the public about an actual or alleged Federal government activity by a person primarily engaged in disseminating information to the public and whether a lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. Your request does not show that it was submitted by a person primarily engaged in disseminating information to the public. Your request also does not contain enough information to support a finding that a lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. Therefore, I find that neither standard is met by your request, and your request for expedited processing is denied. This request will be processed as expeditiously as possible by the Office of Research and Development (ORD).

You may appeal this denial for expedited processing by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal

by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals *received* after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Should you choose to appeal this determination, please be sure to fully address all factors required by EPA's FOIA Regulations, located at 40 C.F.R. § 2.107(i), in your appeal. If you have any questions concerning this determination please contact me at (202) 566-1667.

Sincerely,


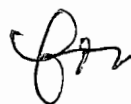

 Larry F. Gottesman
Agency FOIA Officer

Exhibit 5

EPA-HQ-2018-005636 Request Details



Request Information				Collapse -
Full Name	Surbhi Sarang	Date Submitted	03/20/2018	
Organization	Environmental Defense Fund	Estimated Date of Completion	04/19/2018	
		Final Disposition	Undetermined	

Description Collapse -

Requesting records regarding EPA adoption of unsuccessful anti-science legislation.

Attached Supporting Files Collapse -

Download	Attached File Name	Size (MB)	File Type
<input type="checkbox"/>	Sarang,(Anti-Science).Rqst.pdf	0.6592	Adobe PDF Document

Released Records Collapse -

Download	Title	Size (MB)	File Type	Release Date
No records have been released yet.				

Exhibit 6

Surbhi Sarang

From: foia_hq@epa.gov
Sent: Friday, May 4, 2018 5:57 PM
To: Surbhi Sarang
Subject: FOIA Request EPA-HQ-2018-007397 Submitted

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: EPA-HQ-2018-007397
- Requester Name: Surbhi Sarang
- Date Submitted: 05/04/2018
- Request Status: Submitted
- Description: Please see attached FOIA request.

Exhibit 7



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAY 10 2018

OFFICE OF
GENERAL COUNSEL

Ms. Surbhi Sarang
Environmental Defense Fund
1875 Connecticut Avenue, NW
Suite 600
Washington, DC 20009

Re: Freedom of Information Act Request – EPA-HQ-2018-007397

Dear Ms. Sarang:

This is in response to your request for a fee waiver and expedited processing, in connection with your Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency (EPA) seeking records related to EPA's consideration and implementation of ideas derived from or similar to unsuccessful House Committee on Science, Space & Technology legislation, concerning EPA's use of science.

We have reviewed your submission and based on the information provided, we are granting your request for a fee waiver. However, this fee waiver does not include a waiver of fees for records that are publicly available. The EPA Office of Research and Development (ORD) will respond to your information request for the Agency.

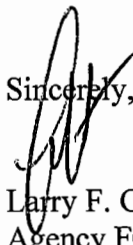
Your request for expedited processing was evaluated as to whether there is an urgency to inform the public about an actual or alleged Federal government activity by a person primarily engaged in disseminating information to the public and whether a lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. Your request does not show that it was submitted by a person primarily engaged in disseminating information to the public. Your request also does not contain enough information to support a finding that a lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. Therefore, I find that neither standard is met by your request, and your request for expedited processing is denied. This request will be processed as expeditiously as possible by the Office of Research and Development (ORD).

You may appeal this denial for expedited processing by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal

by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals *received* after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

If you have any questions concerning this determination please contact me at (202) 566-1667.

Sincerely,



Larry F. Gottesman
Agency FOIA Officer

Exhibit 8

EPA-HQ-2018-007397 Request Details



Request Information				Collapse -
Full Name	Surbhi Sarang	Date Submitted	05/04/2018	
Organization	Environmental Defense Fund	Estimated Date of Completion ⓘ	06/06/2018	
		Final Disposition	Undetermined	

Description	Collapse -
<div style="border: 1px solid #ccc; padding: 5px; min-height: 80px;"> Please see attached FOIA request. </div>	

Attached Supporting Files				Collapse -
Download	Attached File Name	Size (MB)	File Type	
<input type="checkbox"/>	EPA Science FOIA Update 5.4.2018.pdf	0.3977	Adobe PDF Document	
<input type="button" value="Download Selected"/> <input type="button" value="Download All"/>				

Released Records					Collapse -
Download	Title	Size (MB)	File Type	Release Date	
No records have been released yet.					