



April 15, 2013

Office of Information Programs and Services
A/GIS/IPS/RL
U. S. Department of State
Washington, D.C. 20522-8100
Facsimile: (202) 261-8579

Re: *Freedom of Information Act Request – Expedited Processing Requested*

Dear Freedom of Information Act Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Friends of the Earth requests documents, records, and materials pertaining to communications between the State Department and the lobbyists or other individuals representing TransCanada; Environmental Resources Management; the Province of Alberta, Canada; CardnoEntrix; Exxon Mobil; McKenna, Long & Aldridge; Bryan Cave LLP; Van Ness Feldman; Nelson, Mullins et al; DLA Piper; Goldwyn Global Strategies; Mehlman, Vogel, Castagnetti Inc.; Rasky Baerlein Strategic Communications; Canadian American Business Council; Goldwyn Global Strategies; and SKDKnickerbocker regarding the Keystone XL¹ pipeline from October 7, 2011 to the present. This request includes documents regarding meetings or communications or other contacts—including meeting minutes and scheduling notes—that any individual from any of the entities listed above arranged or attended with the State Department or that the State Department arranged or attended with any of the listed entities.

Our request includes but is not limited to communications with or by the following individuals employed by or contracted by the above listed entities regarding the Keystone XL pipeline:

Paul Elliot, TransCanada
Anita Dunn, SKDKnickerbocker
Susan Carter, Exxon Mobil
David Castagnetti, Mehlman, Vogel, Castagnetti Inc
Kelly Bingel, Mehlman, Vogel, Castagnetti Inc
Alex Vogel, Mehlman, Vogel, Castagnetti Inc
Gordon Giffin, McKenna, Long & Aldridge
Alex McGee, McKenna Long & Aldridge
Bandelee McQueen, McKenna Long & Aldridge
David Pollak, McKenna Long & Aldridge
Andrew Shaw, McKenna Long & Aldridge

¹ For purposes of this FOIA request 'Keystone XL' refers to the oil pipeline that would run from the Canadian border to the Texas Gulf Coast.

Mary Scott Greenwood, McKenna, Long & Aldridge
David Russell, Bryan Cave LLP
Brandon Pollak, Bryan Cave LLP
Jeff Berman, Bryan Cave LLP
Jennifer Stewart, Bryan Cave LLP
Broderick Johnson, Bryan Cave LLP
Lisa Epifani, Van Ness Feldman
Curtis Moffat, Van Ness Feldman
Thomas Roberts, Van Ness Feldman
Jonathan Simon, Van Ness Feldman
Justin Meyers, Nelson, Mullins et al
Tom Sullivan, Nelson, Mullins et al
David Wilkins, Nelson, Mullins et al
Graham Shalgian, Rasky Baerlein Strategic Communications
David Tamasi, Rasky Baerlein Strategic Communications
Benjamin Nguyen Wexler, Rasky Baerlein Strategic Communications
Jim Blanchard, DLA Piper
David Goldwyn, Goldwyn Global Strategies

For purposes of this request, “documents, records, and materials” should be interpreted to include copies of all correspondence, including, but not limited to, internal memoranda, memoranda and correspondence with any other federal, state or foreign agencies or individuals, papers, maps, data, scientific (clinical and nonclinical) studies, samples, schematics, field notes/reports, telephone logs, briefing/application documents, electronic mail, scheduling notes, meeting minutes, other correspondence between meeting attendees or those who scheduled meetings, and notes documenting any communication (regardless of physical form or characteristics) concerning the specific requests above.

Expedited Processing Request

Pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 22 C.F.R. § 171.12(b), *Friends of the Earth requests expedited processing of this FOIA request due to our compelling need for the information requested.* A “compelling need” exists where the requester is “primarily engaged in disseminating information” and can demonstrate that “[t]he information is urgently needed ... in order to inform the public concerning actual or alleged Federal Government activity.” 22 C.F.R. § 171.12(b)(2); *see also* 5 U.S.C. § 552(a)(6)(E)(v). Friends of the Earth is a non-profit organization primarily engaged in information dissemination, public education and advocacy on environmental issues. Friends of the Earth will be taking numerous steps to disseminate the requested information to the public, and have a demonstrated and longstanding capacity to do so. We typically disseminate similar information through direct communication to journalists and other members of the media, through press releases, through newsletters to all of our members, through our web sites, through public meetings, and through other legislative and executive fora. The “[a]ctual or alleged Federal Government activity” to which the requested information pertains is the State Department’s decision whether to grant a Presidential Permit for the Keystone XL project.

Friends of the Earth urgently needs this information because the particular value of the information “will be lost if not disseminated quickly.” 22 C.F.R. § 171.12(b)(2)(i). The State Department issued the draft supplemental environmental impact statement (EIS) for the Keystone XL project in March 2013, and the public comment period closes on April 22, 2013. The State Department will imminently decide whether to finalize the EIS and grant TransCanada the Presidential Permit to build the Keystone XL pipeline across the U.S.-Canada border. The information requested will lose value to Friends of the Earth if Friends of the Earth does not receive it in time to disseminate it to the public for its use in participating in the environmental review process. Friends of the Earth seeks to use this information in comments pertaining to the approval of the Keystone XL pipeline, including the current environmental review being conducted by State under the National Environmental Policy Act and any Presidential permit review and approval. The State Department’s permitting decision is an action “taken, contemplated or alleged by or about” the State Department, an agency of the U.S. Government. 22 C.F.R. § 171.12(b)(2)(ii). Friends of the Earth reserves the right to appeal any denial of our request for expedited processing of this request.

We ask that State’s response comply with the Attorney General’s March 2009 FOIA memorandum, reiterating President Obama’s directive that in “the face of doubt, openness prevails.” Attorney General, Memorandum for Heads of Executive Departments and Agencies at 1 (March 19, 2009) (Attorney General Memorandum). Accordingly, we expect that State will apply a presumption in favor of disclosure and consider that it “should not withhold information simply because it may do so legally.” *Id.*; *see also* 40 C.F.R. § 1506.6(f) (noting the intersection of the National Environmental Policy Act and FOIA). We also expect that State will act promptly, in keeping with the Attorney General’s admonition that the timely disclosure of information “is an essential component of transparency.” Attorney General Memorandum at 3.

Fee Waiver Request

As a non-profit organization, Friends of the Earth also requests a waiver of all fees incurred in providing these records. Disclosure of the requested information “is in the public interest because it is likely to contribute significantly to the public understanding of the operation 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). If our request for a fee waiver is denied and any expenses associated with this request are in excess of \$25.00, please obtain our approval before any such charges are incurred.

Disclosure of the requested information would inform the public of governmental activities affecting their safety, health and environment. Friends of the Earth is a not-for-profit charitable organization with no commercial interest in the information requested and has relevant expertise in the areas of environment and human health and environmental law. Friends of the Earth has a long and active history in addressing threats to human health and the environment posed by the development, production, shipment and processing of oil and gas, including tar sands oil. Friends of the Earth also has additional relevant experience with the proper implementation of the National Environmental Policy Act and other relevant statutes governing the Obama administration’s consideration of the Keystone XL pipeline project request.

Because of the non-profit, public interest nature of Friends of the Earth, we have extremely limited financial resources with which to cover the copying and search expenses of this request. Our main purpose in requesting the documents is to increase public knowledge and participation in the government process so fundamental to the effective working of a democracy.

Timely Response and Request for Rolling Release

Pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I), we expect a response within ten (10) working days of your receipt of this request. If this request is denied in whole or in part, we expect a detailed justification for withholding the records. We also request any segregable portions of records that are otherwise not expected to be disclosed by State in response to this request. **Finally, we request that any documents responsive to this request be released by State to Friends of the Earth on a rolling basis** rather than State holding all of the documents for a one-time release. Friends of the Earth reserves the right to appeal any denial of this request.

Please contact us at the number(s) or email(s) listed below with any questions you may have about the materials we are requesting. Thank you for your immediate attention to this matter.

Sincerely,

Ross Hammond, Senior Campaigner, (510) 900-3143, rhammond@foe.org
Damon Moglen, Climate & Energy Project Director, (202) 222-0708, dmoglen@foe.org
Friends of the Earth
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