

October 8, 2015

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 (“FOE”) requests documents, records, and materials pertaining to communications between the US State Department and the Office of the US Trade Representative, the White House, the US Embassy in Malaysia, the Malaysian government, and any other foreign or American entities and individuals between June 19, 2013 and July 27, 2015 regarding the State Department’s decision to classify Malaysia as a Tier 2 Watch List country in the 2015 Trafficking in Persons Report under the Trafficking Victims Protection Act. In addition, Friends of the Earth requests documents, records and materials pertaining to communications *within* the US State Department between June 19, 2013 and July 27, 2015 regarding the State Department’s decision to classify Malaysia as a Tier 2 Watch List country in the 2015 Trafficking in Persons Report under the Trafficking Victims Protection Act.

This request includes, but it not limited to, documents, records and materials pertaining to:

1. Decisions made to include or exclude data in the 2015 TIP Report from outside the statutorily mandated reference year,
2. Any documents, records, and materials pertaining to Malaysia’s involvement in Trans-Pacific Partnership negotiations.
3. The trafficking amendment to the Congressional Trade Priorities and Accountability Act of 2015 (TPA 2015) introduced by Senator Menendez.
4. The discovery of mass graves in Malaysia.

Our request also includes, but is not limited to, communications with or by the following individuals employed by or contracted by the above listed entities:

Secretary John Kerry, US Secretary of State
Tony Blinken, Deputy Secretary of State
Wendy Sherman, Under Secretary of State for Political Affairs
Jonathan Finer, Secretary Kerry’s Chief of Staff
Sarah Sewall, Undersecretary of State for Civilian Security, Democracy and Human Rights
Daniel R. Russel, Assistant Secretary, State Department Bureau of East Asian and Pacific Affairs
Tom Malinowski, Assistant Secretary for Democracy, Human Rights and Labor
Kari Johnstone, Acting Director, State Department Office to Monitor and Combat Trafficking in Persons
Michael Froman, US Trade Representative
Omar Khan, Assistant USTR for Intergovernmental Affairs
Yohannes Abraham, Chief of Staff in the White House Office of Intergovernmental Affairs
Joseph Y. Yun, US Ambassador to Malaysia
Edgard Kagan, Deputy Chief of Mission, US Embassy in Malaysia

Additionally, Friends of the Earth requests the written plan referenced in the 2014 Trafficking in Persons Report (page 260) that Malaysia developed to combat human trafficking which served as the basis for two consecutive waivers from otherwise required downgrades to Tier 3 in the 2012 and 2013 Trafficking in Persons Reports.

Expedited Processing Request

Pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 22 C.F.R. § 171.12(b), FOE 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 and related issues.

FOE 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, newsletters to all of our members, by posting information directly on our web sites, 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 report publishing.

FOE 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). Negotiations of the Trans-Pacific Partnership trade deal have concluded, and thus obtaining information that will shed light on the basis for Malaysia’s upgrade in the State Department’s Trafficking in Persons Report and Malaysia’s role in TPP negotiations is extremely time-sensitive. The information requested will lose value to FOE if they do not receive it in time to disseminate it to the public for its use in participating in the public debate before a final Congressional vote on whether to approve the TPP. FOE seeks to use this information to educate the public about the impacts of the TPP and the TPP negotiating process and to educate lawmakers before the Congressional vote on whether to approve the TPP. The State Department’s TIP report and the decision to upgrade Malaysia’s status are actions “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 3 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). 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, FOE 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)). For all of the above reasons, our request amply meets these criteria. 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 have relevant expertise in the areas of fair trade, good governance, and environmental protection. FOE also has relevant and unique experience campaigning and bringing attention to environmental and human rights issues--including forced labor and human trafficking-- surrounding the palm oil industry’s operations in countries including Malaysia, and has produced press statements, articles, and educational material on these concerns. This work includes:

Issue briefs:

Hidden abuse: The persistence of slave labor within Southeast Asia’s palm oil industry. August 14, 2015 <http://www.foe.org/news/archives/2015-08-hidden-abuse-slave-labor-within-palm-oil>

Landgrabs, forests & finance: Issue brief #1 Driving deforestation: The environmental and social ills of palm oil production http://www.foe.org/system/storage/877/b8/3/2992/Issue_Brief_1_-_Driving_deforestation_-_the_ills_of_palm_oil_production.pdf

Frequently asked questions: Palm oil, forests and finance. 2014 http://www.foe.org/system/storage/877/ea/2/3375/Palm_oil_FAQ_2014_final.pdf

What's driving the palm oil industry's human rights abuses and environmental destruction? Just follow the money. December 20, 2013 <http://www.foe.org/news/archives/2013-12-whats-driving-the-palm-oil-industrys-human-rights-ab>

Articles:

The Obama Administration Just Blew Off Human Trafficking Concerns to Pass the TPP. August 6, 2015 <http://fpif.org/the-obama-administration-just-blew-off-human-trafficking-concerns-to-pass-the-tpp/>

Statements/Actions:

Obama administration manipulates human rights report to “fast track” Malaysia’s participation in TPP trade deal. July 27, 2015 <http://www.foe.org/news/news-releases/2015-07-obama-administration-manipulates-human-rights-report-2>

Groups demand President Obama put human rights before trade. August 5, 2015 <http://www.foe.org/news/archives/2015-08-groups-demand-president-obama-put-human-rights-before-trade>

Friends of the Earth decries sinister manipulation of government trafficking report. August 6, 2015 <http://www.foe.org/news/archives/2015-08-foe-decries-sinister-manipulation-of-trafficking-report>

Reports:

Commodity Crimes: Illicit Land Grabs, Illegal Palm Oil, and Endangered Orangutans. November 2013
http://www.foe.org/system/storage/877/0a/2/3326/FOE_CommodityCrimes_LowRes.pdf

Years of Investing Dangerously: Dimensional Fund Advisors' Ties to Palm Oil
http://libcloud.s3.amazonaws.com/93/5d/7/4633/1/Issue_Brief-DFAs_ties_to_palm_oil.pdf

All of this information is hereby incorporated by reference. If, for some reason, the agency is unable to obtain copies of these materials, please let us know and we will supply them to you.

Because FOE is a non-profit, public interest organization, we have extremely limited financial resources with which to cover the copying and search expenses of this request. Our main purpose in requesting the records is to increase public knowledge and participation in the government process so fundamental to the effective working of a democracy. Friends of the Earth has received fee waivers with respect to similar FOIA requests from this and other agencies in the past.

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.

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 non-exempt portions of records that are within the scope of this request.

Finally, we request that State release any documents responsive to this request to the Requester on a rolling basis rather than State holding all of the documents for a one-time release. The Requester 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,

Luísa Abbott Galvão
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This request is also supported by:

**AFL-CIO * Alliance to End Slavery and Trafficking * Citizens Trade Campaign *
Communications Workers of America * Rootstrikers *
Sisters of Mercy of the Americas' Institute Justice Team**