
April 27, 2023

FOIA Officer
U.S. Department of State
Office of Information Programs and Services
2201 C Street NW, Ste B266
Washington, DC 20520

Re: Request Under The Freedom Of Information Act For Records Concerning the U.S. Department of State's FOIA Policies or Guidance

This is a request on behalf of Friends of the Earth pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for information concerning policies or guidance governing the United States Department of State’s (“State Department” or the “Department”) processing and disposition of the expedited FOIA request submitted by Friends of the Earth on May 17, 2022, and assigned the tracking number F-2022-08430. Friends of the Earth requests a fee waiver for this request.

RECORDS REQUESTED

Friends of the Earth requests the following records which were generated, received, kept, and/or considered by the State Department:

- From the time period starting on May 17, 2022, up to and including the date of the State Department’s search for records, all records reflecting any communication—written or verbal—to or from the State Department’s Office of Information Programs and Services (A/GIS/IPS) that mention, discuss, apply, or address any policies, procedures, guidelines, protocols, directives, guidance, or other instructions on the processing, assignment, handling, or disposition of the expedited FOIA request submitted by Friends of the Earth on May 17, 2022, and assigned the tracking number F-2022-08430 (including but not limited to records regarding guidelines, protocols, directives, guidance, or other instructions on the release of records, evaluations of or determinations regarding fee waiver requests, assignment to Department offices and programs, processing within Department offices and programs, collection and review of responsive records, approvals to release or withhold records, or claims of exemption);
- From the time period starting on May 17, 2022, up to and including the date of the State Department’s search for records, all records reflecting any communication—written or verbal—to or from the following individuals, their deputies, and their authorized representatives, that mention, discuss, apply, or address any policies, procedures, guidelines, protocols, directives, guidance, or other instructions on the processing, assignment, handling, or disposition of the expedited FOIA request submitted by Friends of the Earth on May 17, 2022, and assigned the tracking number F-2022-08430

(including but not limited to records regarding guidelines, protocols, directives, guidance, or other instructions on the release of records, evaluations of or determinations regarding fee waiver requests, assignment to Department offices and programs, processing within Department offices and programs, collection and review of responsive records, approvals to release or withhold records, or claims of exemption):

- The Assistant Secretary of Administration (A) (who serves as the Department’s Chief FOIA Officer),
 - The Director of the Office of Information Programs and Services (A/GIS/IPS),
 - The Chief of the Requester Liaison Division (A/GIS/IPS/RL) (who serves as the Department’s FOIA Public Liaison),
 - The Chief of the Programs and Policies Division (A/GIS/IPS/PP),
 - The Chief of the Program Support Division (A/GIS/IPS-RM),
 - The Chief of the Statutory Compliance and Research Division (A/GIS/IPS/CR),
 - The Chief Information Officer (CIO),
 - The Executive Secretariat (S/ES), and
 - The chair and co-chair of the Appeals Review Panel;
- From the time period starting on May 17, 2022, up to and including the date of the State Department’s search for records, all records reflecting any communication—written or verbal—to or from any managers, supervisors, or other officials authorized to develop or implement policy for, handle, assign, review, respond to, and/or adjudicate FOIA requests and appeals in the State Department, its offices, and its programs, that mention, discuss, apply, or address any policies, procedures, guidelines, protocols, directives, guidance, or other instructions on the processing, assignment, handling, or disposition of the expedited FOIA request submitted by Friends of the Earth on May 17, 2022, and assigned the tracking number F-2022-08430 (including but not limited to records regarding guidelines, protocols, directives, guidance, or other instructions on the release of records, evaluations of or determinations regarding fee waiver requests, assignment to Department offices and programs, processing within Department offices and programs, collection and review of responsive records, approvals to release or withhold records, or claims of exemption);
 - From the time period starting on May 17, 2022, up to and including the date of the State Department’s search for records, all records reflecting any communication—written or verbal—to or from any Chief, Deputy Chief, or any managers, supervisors, or other authorized officials in the Requester Liaison Division (A/GIS/IPS/RL) that mention, discuss, apply, or address any policies, procedures, guidelines, protocols, directives, guidance, or other instructions on the processing, assignment, handling, or disposition of the expedited FOIA request submitted by Friends of the Earth on May 17, 2022, and assigned the tracking number F-2022-08430 (including but not limited to records regarding guidelines, protocols, directives, guidance, or other instructions on the release of records, evaluations of or determinations regarding fee waiver requests, assignment to Department offices and programs, processing within Department offices and programs, collection and review of responsive records, approvals to release or withhold records, or claims of exemption); and

- From the time period starting on May 17, 2022, up to and including the date of the State Department’s search for records, all records reflecting any communication—written or verbal—to or from any Legal Adviser, Deputy Legal Adviser, or any managers, supervisors, or other authorized officials in the Office of the Legal Adviser (L) that mention, discuss, apply, or address any policies, procedures, guidelines, protocols, directives, guidance, or other instructions on the processing, assignment, handling, or disposition of the expedited FOIA request submitted by Friends of the Earth on May 17, 2022, and assigned the tracking number F-2022-08430 (including but not limited to records regarding guidelines, protocols, directives, guidance, or other instructions on the release of records, evaluations of or determinations regarding fee waiver requests, assignment to Department offices and programs, processing within Department offices and programs, collection and review of responsive records, approvals to release or withhold records, or claims of exemption).

For this request, the term “records” refers to information and documents of any kind, including, but not limited to: documents (handwritten, typed, electronic, or otherwise produced, reproduced, or stored), letters, e-mails, facsimiles, memoranda, correspondence, notes, databases, drawings, diagrams, maps, graphs, charts, photographs, minutes of meetings, summaries of telephone conversations, notes or summaries of interviews, electronic or magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Further, for purposes of this request, the term “records” includes any personal e-mail messages, telephone voice mails or text messages, and internet or network “chat” or social media messages, to the full extent that any such messages fall within the definition of “agency records” subject to FOIA, and including any attachments.

For the purposes of this request, any reference to officers in the agency includes any acting officers.

Pursuant to 5 U.S.C. § 552(a)(3)(B), we ask that these records be provided in electronic and searchable format. We request that responsive records be released as soon as they are available. The categories of records are listed in order of priority preference, and Friends of the Earth is happy to receive subsets of records from the higher priority categories while the State Department processes other records.

FOIA provides that if portions of a document are exempt from release, the remainder must nevertheless be segregated and disclosed, so please provide us with all non-exempt portions of any exempt records. 5 U.S.C. § 552(b). Please explain any redactions by reference to specific provisions of FOIA that allow information to be exempt from disclosure, and specifically explain how the exemption invoked applies to the withheld information. *See* 22 C.F.R. § 171.11(l).

FOIA states that “[e]ach agency, upon any request for records made under paragraph . . . (3) . . . shall determine within 20 [working] days . . . whether to comply with such request and shall immediately notify the person making such request of . . . such determination and the reasons therefor.” 5 U.S.C. § 552(a)(6)(A)(i). “[I]n order to make a determination,” an agency must, inter alia, “determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents.” *Citizens for Responsibility &*

Ethics in Wash. v. Fed. Election Comm'n, 711 F.3d 180, 188 (D.C. Cir. 2013). Accordingly, for any documents or portions of documents that you withhold due to a specific FOIA exemption, please provide a detailed explanation of the purported applicability of any such FOIA exemption, including a specific discussion of how “the agency reasonably foresees that disclosure would harm an interest protected by an exemption.” 5 U.S.C. § 552(a)(8)(A)(i)(I).

REQUEST FOR A FEE WAIVER

Regarding fee waivers, FOIA provides that “[d]ocuments shall be furnished without any charge or at a charge reduced below the [regular fee schedule] if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). DOS’s regulations specify that it will provide a full or partial fee waiver if the requester demonstrates “that disclosure 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.” 22 C.F.R. § 171.16(a). DOS’s regulations implementing FOIA further explain that to demonstrate that disclosure is in the public interest, the requestor must demonstrate that:

- (i) The subject of the request . . . concern[s] identifiable operations or activities of the Federal Government . . .
- (ii) Disclosure of the requested records . . . [is] meaningfully informative about government operations or activities in order to be ‘likely to contribute’ to an increased public understanding of those operations or activities . . .
- (iii) The disclosure . . . contribute[s] to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester . . . [and]
- (iv) The public's understanding of the subject in question . . . [will] be enhanced by the disclosure to a significant extent.

Id. To demonstrate that the requested disclosure is not primarily in the commercial interest of the requester, the Department will consider “[t]he existence and magnitude of [any] commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, [t]he primary interest in disclosure, i.e., whether disclosure is primarily in the commercial interest of the requester.” *Id.* Significantly, “[r]equests for purposes of writing a book, an article, or other publication will not be considered a commercial purpose.” *Id.*

A. The FOIA Request Directly Concerns The Activities Or Operations Of The Federal Government.

It is beyond legitimate dispute that this request directly concerns the activities or operations of the federal government. 22 C.F.R. § 171.16(a)(1)(i). The request seeks records

relating to the State Department's policies, procedures, and practices in processing and responding to FOIA requests from the public, and will enable Friends of the Earth to better understand how the State Department complies with FOIA and other government directives to ensure administrative transparency. Accordingly, this FOIA request directly concerns the operations and activities of the federal government, satisfying this factor.

B. The FOIA Request Is Likely To Contribute To The Public Understanding Of Those Activities and Operations

This FOIA request is likely to contribute to the public understanding of the activities and operations of the Federal Government in several distinct ways. The records will provide the public valuable insight into how the State Department processes FOIA requests from interested citizens, including what types of guidance or policies are applied in processing the requests. The records will likewise enhance public understanding of the types of requests that are subject to certain heightened review, which may provide the public guidance on how best to request records from the State Department in the future. Consequently, the requested documents are necessary for the public to gain a complete understanding of the State Department's FOIA procedures. Accordingly, disclosure of the requested information will contribute significantly to public understanding of the government's operations and activities with respect to FOIA.

Moreover, the requested information has not been publicly disclosed. *See* 22 C.F.R. § 171.16(a)(1)(ii) (providing that “[t]he disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding”). Therefore, the requested information is both new and will help to confirm or clarify information that has been made public. In particular, the State Department's FOIA program has been the subject of several lawsuits alleging that the agency has a policy and practice of unreasonably delaying its responses to FOIA requests from the public. Thus, the FOIA request will help clarify the State Department's FOIA policies, as well as any efforts (if any) to develop and implement changes to its FOIA program to improve public access to government records; reduce the FOIA backlog; and improve timeliness of its responses to the public. These crucial pieces of information will contribute to the public's understanding of the agency's processing of and responses to requests for access to records concerning the government's activities. Specifically, the records requested will be meaningfully informative as to the State Department's compliance with information disclosure statutes and directives.

The public is always well-served when it knows how the government conducts its activities, particularly matters touching on important questions about how agencies are implementing their statutory duties. The records produced from this FOIA request will produce the most reliable information available to the public on these important matters ongoing within the agency; indeed, in most cases, this is the only way that the public has to gain insight. Hence, there can be no dispute that disclosure of the requested records to the public will significantly contribute to educating the public about the State Department's operations, activities, and decisionmaking. We will utilize the released records and our organizational expertise to help our members, lawmakers, activists, the general public, and the media to increase their understanding of these important issues.

C. Disclosure Will Contribute To The Understanding Of A Reasonably Broad Audience Of Interested Persons

Pursuant to the State Department’s regulations implementing FOIA, when considering whether the requested disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, the agency will consider the “requester’s expertise in the subject area as well as the requester’s ability and intention to effectively convey information to the public.” 22 C.F.R. § 171.16(a)(1)(iii). “It shall be presumed that a representative of the news media will satisfy this consideration.” *Id.*

Friends of the Earth qualifies as a representative of the news media and thus, presumptively satisfies this factor. Friends of the Earth is primarily engaged in information dissemination and has a demonstrated “expertise in the subject area.” 22 C.F.R. § 171.16(a)(1)(iii). As suggested by FOIA’s plain meaning and legislative history, the term “primarily engaged in disseminating information” means that “information dissemination be the main [and not merely an incidental] activity of the requestor.” *Allied Progress v. CFPB*, No. 17-686 (CKK), 2017 WL 1750263, at *3 (D.D.C. May 4, 2017) (quoting *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 276 (D.D.C. 2012)). Publishing information “need not be [the organization’s] sole occupation,” *id.*, but must be a primary activity in furtherance of the organization’s mission, *see Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding that the plaintiff was “primarily engaged in disseminating information” where the “plaintiff disseminates information regarding civil rights and voting rights to educate the public, promote effective civil rights laws, and ensure their enforcement by the Department of Justice”).

Friends of the Earth’s primary objective is disseminating information relevant to environmental concerns. Indeed, one of Friends of the Earth’s primary missions is “to change the perception of the public, media, and policymakers—and effect policy change—with hard-hitting, well-reasoned policy analysis and advocacy campaigns that describe what needs to be done.” Friends of the Earth, *What We Do*, <https://foe.org/about-us/> (last visited May 10, 2022). To that end, a key aspect of Friends of the Earth’s recent work involves the investigation and publication of information concerning the activities of the federal government and the impacts of those activities on our climate and oceans. *See, e.g., see Friends of the Earth Democracy*, <https://foe.org/projects/democracy/> (last visited March 28, 2023). Friends of the Earth believes that “[e]nvironmental progress—from curbing climate change to ensuring the safety of the food we eat and the water we drink—is hampered by threats to our democratic system.” *Id.* Accordingly, the organization works to ensure effective public oversight of the federal government’s operations, including through effective use of FOIA requests and other open government laws. Critically, Friends of the Earth does not merely obtain information and then contact members of the press to relate that information; rather, the organization independently analyzes the information, drafts its own reports and articles on the issues, and disseminates the information broadly through its own publications to its members and other interested persons. Thus, Friends of the Earth “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.” *See* 5 U.S.C. § 552(a)(4)(A)(ii); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 800 F.2d 1381, 1387 (D.C. Cir. 1989). Moreover, the organization has extensive and well-exercised means

to keep the public informed on the operations and activities of the federal government. These methods include, but certainly are not limited to, providing essential information in easy-to-read reports, a quarterly news magazine, fact sheets, press statements, public hearings and events, phone calls, letters to the editor, blogs, email alerts, and webpage updates.

Particularly relevant here, Friends of the Earth's work relies in part on the prompt disclosure of information by federal agencies in response to public records requests. Indeed, Friends of the Earth frequently submits FOIA requests to federal agencies, including the State Department, seeking information concerning the operations, policies, activities, and practices of the federal government on various matters implicating environmental concerns. Friends of the Earth then compiles the information obtained through those requests, independently analyzes the information, drafts its own reports and articles about the information, and disseminates those information products to the public, news media, its members, and policymakers, including members of Congress. FOIA is thus a vital tool for accomplishing Friends of the Earth's mission activities. Hence, the State Department's compliance with the statute's mandates and treatment of FOIA requests is of significant interest to Friends of the Earth. Such information is likewise of significant interest to other organizations and individuals who monitor and report on the agency's activities. Because Friends of the Earth intends to compile, analyze, and disseminate information obtained from this request that is of significant interest to a broad swath of the public—i.e., information relevant to the State Department's processing of and responses to public records requests—to inform the public's understanding of the agency's operations and activities, Friends of the Earth is indisputably "primarily engaged in disseminating information." *See Prot. Democracy Proj. v. U.S. Dep't of Def.*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017). Accordingly, Friends of the Earth has met this criterion for a fee waiver.

In any event, even if not considered a member of the news media, disclosure of the requested information to Friends of the Earth will undoubtedly "contribute to the understanding of a reasonably broad audience of persons interested in the subject." 22 C.F.R. § 171.16(a)(1)(iii). As stated, a broad audience of persons is interested in the State Department's FOIA procedures. In fiscal year 2022, the State Department received over 13,700 FOIA requests, according to the agency's annual report. Several hundred individuals and organizations likely will submit FOIA requests to the agency in fiscal year 2023. Indeed, in the first quarter of 2023, the State Department has already received nearly 3500 FOIA requests. Moreover, requestors for State Department records under FOIA include not only public interest organizations, such as Friends of the Earth, but also the news media, commercial enterprises, trade groups, state and local governments, and individual citizens comprising the full range of the political spectrum. The large number of persons and entities that have submitted FOIA requests to the State Department or that will do so in the coming months and years are very likely to be extremely interested in how the agency processes those requests. Disclosure of the requested information will therefore significantly contribute to a very broad audience's understanding of agency procedures.

Moreover, Friends of the Earth has the intent and ability to disseminate this information broadly as it has a large member base of individuals with a strong interest in monitoring the federal government's activities and decisionmaking processes on matters that concern the environmental and energy policy of the United States. Friends of the Earth has a demonstrated

“expertise in the subject area” of utilizing open government laws to monitor the government’s activities, “as well as the . . . ability and intention to effectively convey information to the public.” 22 C.F.R. § 171.16(a)(1)(iii). Indeed, as explained, Friends of the Earth utilizes various means of communication to update its members and activists, as well as the media and general public, on government activities that may impact human health and the environment. Specifically for this request, Friends of the Earth plans to alert the public, members of Congress, policymakers, and activists as to the State Department’s FOIA procedures and policies, and how those practices impact the ability of the public and policymakers to conduct meaningful oversight of the agency and its activities. As a result of its partnerships with other non-profit organizations and journalists, and its respected role in public education, Friends of the Earth is well-positioned to disseminate the requested information to its partners and the media, who will in turn disseminate the information across their networks of members and supporters, amplifying the organization’s reach.

In summary, as a well-known non-profit organization with a large following, experience in news dissemination, and multiple partnerships with other non-profit groups, the news media, and Congressional offices, Friends of the Earth will most certainly have the ability to disseminate this information to a reasonably broad audience. As Friends of the Earth is a non-profit committed “to chang[ing] the perception of the public, media, and policymakers—and effect[ing] policy change—with hard-hitting, well-reasoned policy analysis and advocacy campaigns that describe what needs to be done,” Friends of the Earth, *What We Do*, <https://foe.org/about-us/> (last visited May 10, 2022), including through the investigation and publication of how the government complies with public disclosure requirements to enable effective public oversight and better protect our democratic process, *see* Friends of the Earth *Democracy*, <https://foe.org/projects/democracy/> (last visited March 28, 2023), actions taken by a federal agency to encourage and facilitate the expansion of the fossil fuel industry are directly correlated both with the expertise of Friends of the Earth and with the interests of its supporters and partners.

D. The Disclosure Will Enhance The Public’s Understanding Of The Subject To A Significant Extent

The information requested is of high importance to all American people and certainly Friends of the Earth’s large member base, who have interests in understanding and monitoring the federal government’s environmental and energy policy. The information requested concerns the State Department’s review of FOIA requests, including those that concern “sensitive,” “high visibility,” or potentially embarrassing information, and has not previously been released to the public. The requested records therefore will help clarify the government’s process and rationale with respect to highly consequential decisions and actions related to public oversight of the United States’ foreign policy. The contents of the request are therefore meaningfully informative, and Friends of the Earth intends to take the information disclosed and compile, distill, and disseminate policy analyses, news alerts, reports, and articles to inform the public, members of Congress, policymakers, and activists as to recent government policies and activities that directly impact the overriding public interest in “ensur[ing] an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governor accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). In light of

Friends of the Earth's established record of significantly contributing to the public's understanding of and discourse on related subjects, there is no reason to doubt that a similar outcome will occur here. Accordingly, considering the foregoing, Friends of the Earth has more than adequately demonstrated that disclosure will significantly enhance the public's understanding of the State Department's compliance with its statutory mandates and executive directives. *See* 22 C.F.R. § 171.16(a)(1)(iv); *see also Jacksonville Port Auth. v. Adams*, 556 F.2d 52, 59 (D.C. Cir.1977) (“[T]here is an overriding public interest ... in the general importance of an agency's faithful adherence to its statutory mandate.”)

E. Friends Of The Earth Does Not Have A Commercial Interest That Would be Furthered By The Requested Disclosure

Friends of the Earth is a not-for-profit charitable organization with no commercial interest in or use for the information requested. 22 C.F.R. § 171.16(a)(2). There is no “existence” or “magnitude” to any commercial interest associated with this request, and Friends of the Earth's “primary interest in disclosure” is simply to benefit the public interest by informing the public and other members of the media as to government activities. *Id.* § 171.16(a)(2)(i). The organization's 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.¹ The requested information will be broadly disseminated to the public, and will be used to educate and inform the public regarding the federal government's decisionmaking processes and actions responding to the energy crisis. Thus, Friends of the Earth's request is not rooted in a purpose that furthers its commercial, trade or profit interests. *See* Off. Mgmt. & Budget, *Uniform Freedom of Information Act Fee Schedule and Guidelines*, 52 Fed. Reg. 10,012, 10,017-18 (Mar. 27, 1987); 22 C.F.R. § 171.16(a)(2). Accordingly, Friends of the Earth does not have a commercial interest in the disclosure of the requested information.

For the reasons outlined above, Friends of the Earth is entitled to a fee waiver for this request. As a non-profit, public interest organization, Friends of the Earth has extremely limited financial resources with which to cover the copying and search expenses of this request. If the request for a fee waiver is denied and any expenses associated with this request are in excess of \$25.00, please obtain Friends of the Earth's approval before any such charges are incurred.

CONCLUSION

We look forward to receiving the agency's final, expedited response within 20 working days. Thank you for your prompt attention to this matter. Please email me at lizzie@eubankslegal.com with any questions about this FOIA request. Please also include Lukas Ross at lross@foe.org on all correspondence.

¹ As explained above, *supra* at 6-7, Friends of the Earth also qualifies as a “representative of the news media,” and is further entitled to document search and review without charge (as well as the first 100 pages of paper copies free of charge). *See* 22 C.F.R. § 171.14 (b)(5)(ii)(C) (“[R]epresentative 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.”).

Respectfully submitted,

/s/Elizabeth L. Lewis

Elizabeth L. Lewis

Associate Attorney