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7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 **SIERRA CLUB,**

12 **Plaintiff,**

13 **v.**

14 **UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,**

15 **Defendant.**

Case No.

COMPLAINT

(Freedom of Information Act Case)

16
17
18 **INTRODUCTION**

19 1. Sierra Club seeks relief for violations of the Freedom of Information Act (“FOIA”), 5
20 U.S.C. § 552, by the U.S. Environmental Protection Agency (“EPA,” or the “Agency”). The
21 Agency has failed to adequately respond to four requests for agency records submitted by the
22 Sierra Club in the summer of 2017 and in January 2018. *See* 5 U.S.C. § 552(a)(6)(A) (requiring
23 responsive determination within 20 working days).

1 2. The requests sought records of communications between seven new employees in the
2 EPA’s Office of the Administrator and specific third-parties, as well as certain internal
3 communications between these employees and EPA Administrator Scott Pruitt. In submitting
4 these FOIA requests, Sierra Club sought to investigate four troubling practices at EPA: (1) Mr.
5 Pruitt’s and other political staff’s propensity to misstate factual information to the public and
6 media; (2) Inappropriate and possibly illegal use of EPA staff time to covertly lobby for the
7 United States’ withdrawal from the Paris Climate Agreement and other policy changes; (3)
8 Politically motivated changes to factual information about climate change on EPA’s website; and
9 (4) EPA’s coordination with a public affairs firm closely associated with right-wing political
10 causes.

11 3. Sierra Club submitted its first request to EPA on June 20, 2017; Sierra Club submitted
12 two additional requests on July 21, 2017, and another request on January 8, 2018. The requests
13 are attached as Exhibits A, B, C, and D.

14 4. EPA has not provided the Sierra Club with a responsive determination, pursuant to 5
15 U.S.C § 552(a)(6)(A), nor has it provided any responsive documents or committed to a date by
16 which it intends to produce such documents. That failure violates the Act, which requires an
17 agency to make a responsive determination “within 20 days (excepting Saturdays, Sundays, and
18 legal public holidays) ... after the receipt” of a request. *Id.*

19 5. Sierra Club therefore brings this action seeking injunctive, declaratory, and other
20 appropriate relief against EPA to remedy its violations of the law.

21 **SUBJECT MATTER JURISDICTION AND VENUE**

22 6. This Court has jurisdiction over this case under 5 U.S.C. § 552(a)(4)(B), and 28 U.S.C. §
23 1331.

1 7. Sierra Club has its principal place of business in Oakland, California; this Court is,
2 consequently, the proper venue for this action. 5 U.S.C. § 552(a)(4)(B) (providing for venue “in
3 the district in which the complainant resides, or has [its] principal place of business, or in which
4 the agency records are situated, or in the District of Columbia”).

5 **INTRADISTRICT ASSIGNMENT**

6 8. This case arises, within the meaning of 5 U.S.C. § 552, in Alameda County. For that
7 reason, it is properly assigned to the Oakland Division. N.D. Cal. L.R. 3-2(c)-(d).

8 **PARTIES**

9 9. The EPA is a federal agency, subject to FOIA. 5 U.S.C. § 552 (f)(1).

10 10. The Sierra Club is a nonprofit, membership organization, with nearly 839,000 members
11 nation-wide. The Sierra Club seeks to inform and educate the public as to the activities of the
12 United States Environmental Protection Agency, and other federal agencies entrusted with the
13 administration of public-health and environmental laws, with the aim of improving public
14 understanding of, and support for, public-health and environmental protection. The Sierra Club
15 has a long history of advocacy, and public education, as to the dangers of climate change-causing
16 and other pollution, as well as the importance of federal enforcement of the Clean Air Act, Clean
17 Water Act, and other bedrock environmental statutes.

18 11. To that end, Sierra Club routinely seeks information, made available by FOIA, from EPA
19 and other federal agencies, and uses that information to further educate and inform its members,
20 and the public, as to the activities of those agencies, and political appointees to those agencies.

21 12. Sierra Club brings this action on its own behalf and on behalf of its members. Sierra
22 Club and its members have been and continue to be injured by EPA’s failure to provide
23

1 requested records within the timeframe mandated by FOIA. The requested relief will redress
2 these injuries.

3 **LEGAL FRAMEWORK: THE FREEDOM OF INFORMATION ACT**

4 13. The Freedom of Information Act seeks to “open agency action to the light of public
5 scrutiny,” by “requiring agencies to ‘adhere to ‘a general philosophy of full agency disclosure,’”
6 *U.S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 142 (1989) (citations omitted). The Act’s
7 requirements are meant to “ensure an informed citizenry, vital to functioning of a democratic
8 society, needed to check against corruption and to hold the governors accountable to the
9 governed.” *Nat’l Labor Relations Bd. v. Robbins Tire & Rubber*, 437 U.S. 214, 242 (1978).

10 14. To achieve that result, FOIA requires every federal agency to, *inter alia*, “make
11 reasonable efforts to search for,” and “make . . . promptly available,” agency records that are
12 requested by any person, including electronic records. 5 U.S.C. §§ 552(a)(3)(A)-(C) & (f)(2).

13 15. An agency must “determine within 20 days (excepting Saturdays, Sundays, and legal
14 holidays” after the receipt of any such request “whether to comply,” and “immediately notify the
15 person making such request” of “such determination,” and the person’s attendant rights under
16 FOIA. 5 U.S.C. § 552(a)(6)(A). That initial determination may be delayed by 10 working days,
17 but only if the agency demonstrates the existence of specified “unusual circumstances.” 5 U.S.C.
18 § 552(a)(6)(B).

19 16. The Act enumerates limited exemptions, which an agency may invoke to withhold
20 records. *See, e.g.*, 5 U.S.C. §§ 552(a)(8) & (b)-(c). Any agency making such an invocation bears
21 the burden of demonstrating that the exemption applies, for each withheld record. *Schiffer v.*
22 *F.B.I.*, 78 F.3d 1405, 1409 (9th Cir. 1996).

1 17. The Act and EPA’s implementing regulations provide an administrative review process,
2 by which a person requesting records may appeal any adverse determination by an agency as to
3 that person’s request. 5 U.S.C. § 552(a)(6)(A)(III). Where “the agency fails to comply with the
4 applicable time limits,” 5 U.S.C. § 552(a)(6)(C)(i), however, the requester is deemed to have
5 exhausted those administrative remedies. *See Citizens for Responsibility & Ethics in Washington*
6 *v. Federal Election Com’n*, 711 F.3d 180, 186 (D.C. Cir. 2013).

7 18. A court may “assess ... reasonable attorney fees and other litigation costs reasonably
8 incurred in any case” under FOIA “in which the complainant has substantially prevailed.” 5
9 U.S.C. § 552(a)(4)(E)(i).

10 **FACTUAL BACKGROUND**

11 19. Although EPA was under a hiring freeze for most positions from January 23, 2017 until
12 at least some time in April 2017, EPA hired a number of new employees to work within EPA
13 Headquarters, and specifically in the Office of the Administrator and its suboffices, during that
14 time. These included, among many others, six employees serving in the Office of Public Affairs,
15 and one additional employee in the Office of Policy responsible for “strategic communications”.
16 Those seven employees, whose communications are at issue in Sierra Club’s FOIA requests, are:
17 JP Freire, Jahan Wilcox, Lincoln Ferguson, John Konkus, Elizabeth Bowman, Amy Graham and
18 Daisy Letendre.

19 20. The communications of these EPA employees are of interest to Sierra Club and its
20 members in part because each of these new hires lacks prior experience or expertise in
21 environmental protection and instead has a strong connection with anti-EPA organizations,
22 companies, or politicians. They each formerly worked for either a Republican member of
23 Congress with a strong record of opposing environmental protections; a polluting industry; the

1 Trump Campaign; or Mr. Pruitt himself when he was the Oklahoma Attorney General. Sierra
2 Club's first request (attached as Exhibit A), was submitted on June 20, 2017 and sought
3 production of communications (including emails, text messages, and other forms of
4 communications) between JP Freire, Jahan Wilcox, Lincoln Ferguson, John Konkus, and
5 Elizabeth Bowman and nine external organizations, including various media outlets and the U.S.
6 Congress. The request specified that it sought documents created between January 20, 2017 and
7 the present.

8 21. For the same time period, the first request also sought communications between those
9 five employees and Mr. Pruitt regarding eight specific subject matter categories, including:

- 10 (a) Preparation for interviews, or other engagements, with media outlets and media
11 representatives, including but not limited to talking points or briefing materials;
12 (b) Press releases;
13 (c) The science of climate change;
14 (d) Factual information about coal industry jobs;
15 (e) Electric grid reliability;
16 (f) Factual information provided by individuals, corporations, or other entities external to
17 EPA;
18 (g) Changes to the content of EPA public-facing websites; and
19 (h) the Sierra Club.

20 22. Sierra Club's first request also included a fee waiver request under 5 U.S.C. §
21 552(a)(4)(A)(iii).

22 23. EPA confirmed receipt of Sierra Club's first request on the same day it was submitted
23 and assigned it tracking number EPA-HQ-2017-008660.

1 24. Sierra Club's second request (attached as Exhibit B) was submitted on July 21, 2017 and
2 sought the same communications as the first request, but for the period June 21, 2017 through the
3 present.

4 25. EPA confirmed receipt of Sierra Club's second request on the same day it was submitted
5 and assigned it tracking number EPA-HQ-2017-009699.

6 26. Sierra Club's third request (attached as Exhibit C), also submitted on July 21, 2017,
7 sought communications dated from January 20, 2017 through the present, between two
8 additional EPA employees—Amy Graham and Daisy Letendre—and eleven external parties,
9 along with their communications with Mr. Pruitt on the same eight topics as the first two
10 requests.

11 27. EPA confirmed receipt of Sierra Club's third request on the same day it was submitted
12 and assigned it tracking number EPA-HQ-2017-009700.

13 28. EPA has since consolidated the first three requests under tracking number EPA-HQ-
14 2017-08660.

15 29. Although EPA initially denied Sierra Club's request for a public interest fee waiver for its
16 second and third requests, EPA informed Sierra Club in consolidating the first three requests that
17 no fees would be charged on any of the three requests.

18 30. Sierra Club's fourth request (attached as Exhibit D) was submitted on January 8, 2018. It
19 sought communications between Jahan Wilcox and the founders of Definers Public Affairs, a
20 political consulting firm that shares at least nine current and former executives, as well as its
21 office space, with both America Rising, a Republican-affiliated political action committee, and
22 NTK Network, a conservative news outlet that EPA has frequently promoted on social media
23 since Mr. Pruitt took office. The fourth request also sought any of Mr. Wilcox's records that

1 included specific set of search terms related to Definers, America Rising, Need to Know
2 Network, or Mr. Wilcox's former employer, the Republic National Committee. EPA briefly had
3 entered into a no-bid contract with Definers Public Affairs, but canceled it after it was exposed
4 by the media. *See* Eric Lipton & Lisa Friedman, *Consulting Firm Whose Staff Scoured E.P.A.*
5 *Employees' Emails Loses Media Contract*, The New York Times (Dec. 19, 2017),
6 <https://www.nytimes.com/2017/12/19/climate/epa-definers-public-affairs-contract.html>.

7 31. EPA confirmed receipt of Sierra Club's fourth request on the same day it was submitted
8 and assigned it tracking number EPA-HQ-2018-003186.

9 32. FOIA required EPA to make a final determination upon Sierra Club's first request by
10 July 19, 2017, upon its second and third requests by August 18, 2017, and upon its fourth request
11 by February 6, 2018. *See* 5 U.S.C. § 552(a)(6)(A)(i).

12 33. While EPA has been in correspondence with Sierra Club about narrowing the scope of
13 the first three requests, EPA has continuously delayed in processing the requests, despite Sierra
14 Club's agreement to narrow the requests and its prompt responses to the Agency's requests for
15 clarification.

16 34. After coming to agreement on the scope of the first three requests on December 1, 2017,
17 EPA informed counsel for Sierra Club on January 12, 2018 that the Agency's E-Discovery team
18 had performed a search for responsive documents, which produced 5,557 records. EPA could
19 not, however, say when the records would be reviewed, let alone produced. After hearing
20 nothing more from EPA after several weeks, on February 8, 2018, counsel for Sierra Club
21 inquired whether EPA had made any progress on the requests, whether any of the documents had
22 been reviewed, and if so, whether a rolling production was possible. EPA counsel responded on
23 February 13, 2018 that that she would check in with Office of Public Affairs staff as to the status

1 of the requests. Sierra Club has heard nothing further from EPA about these requests in the
2 ensuing nine weeks.

3 35. Regarding the fourth request, Sierra Club has received no correspondence from EPA
4 beyond an automatic acknowledgement e-mail and a letter responding to Sierra Club's request
5 for a public interest fee waiver. In this letter, dated January 11, 2018, EPA informed Sierra Club
6 that the "total fees that would be incurred in processing this request do not meet the cost
7 threshold and therefore [are] not billable."

8 **CLAIM FOR RELIEF**

9 36. The previous paragraphs are re-alleged and incorporated by reference.

10 37. EPA has failed to make a final determination with regard to Sierra Club's requests for
11 records, to produce responsive materials, or to identify any grounds to withhold the responsive
12 records.

13 38. The Agency has thereby violated FOIA's requirements, including (without limitation):
14 the Act's requirement that an agency make a timely responsive determination, 5 U.S.C.
15 § 552(a)(6); and FOIA's requirement that an agency timely complete a search for responsive
16 records, and promptly make such records available, 5 U.S.C. § 552(a)(3).

17 39. The Sierra Club has exhausted its administrative remedies, and is otherwise entitled to
18 obtain the requested records.

19 **PRAYER FOR RELIEF**

20 Wherefore, Plaintiff respectfully requests that this Court:

21 (1) Declare that EPA has violated FOIA, by its failure to timely respond to Sierra Club's
22 request, and its failure to make the requested records available;

23

- 1 (2) Order that the EPA make available to Sierra Club the records Sierra Club has requested,
2 promptly and at no cost;
- 3 (3) Retain jurisdiction over this case to rule on any assertions by EPA that any responsive
4 records held by the Agency are, in whole or in part, exempt from disclosure;
- 5 (4) Award Sierra Club's litigation costs and attorneys' fees in this action;
- 6 (5) Order such other relief as the Court may deem just and proper.
- 7

8 Dated: April 19, 2018

9

10 Respectfully submitted,

11 /s/ Elena Saxonhouse

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EXHIBIT A



June 20, 2017

VIA FOIAONLINE.REGULATIONS.GOV
U.S. Environmental Protection Agency Headquarters

Re: Freedom of Information Act Request: Communications of EPA Public Affairs and Communications Staff

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, as amended ("FOIA"), from Sierra Club, a nonprofit organization whose purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

REQUESTED RECORDS¹

Sierra Club requests Records of the following type in the possession, custody, or control of the U.S. Environmental Protection Agency ("EPA") for the period January 20, 2017 through the present:²

¹ "Records" means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, emails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described below at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of EPA, National Headquarters and all of its Offices, Regions and other subdivisions.

² The time period for a records search can begin on the first-employed staff person's date of hire, but as the dates on which these individuals joined the EPA are not public, we are unable to specify a narrower time frame.

1. All emails, text messages, faxes and other communications from the EPA employees listed in 1.a below to individuals employed at the entities listed in 1.b below or from individuals employed by the organizations listed in 1.b to the EPA employees listed in 1.a. To assist with your search, we have provided the domain names for official e-mail accounts for the external entities. However, we are not limiting our request to e-mails to or from such accounts as we are also seeking text messages, faxes, and any e-mails from individuals employed by these external organization's personal accounts that were sent to the listed EPA employees that address EPA business.
 - a. Employees
 - i. JP Freire
 - ii. Jahan Wilcox
 - iii. Lincoln Ferguson
 - iv. John Konkus
 - v. Elizabeth Bowman
 - b. External organizations
 - i. The Washington Times (washingtontimes.com)
 - ii. Boston Herald (bostonherald.com)
 - iii. USA Today (usatoday.com)
 - iv. The News Journal (delawareonline.com)
 - v. The Jackson Sun (jacksonsun.com)
 - vi. The Hill (thehill.com)
 - vii. Fox News (foxnews.com)
 - viii. Breitbart News (breitbart.com)
 - ix. United States Congress (mail.senate.gov; mail.house.gov)
2. All emails, text messages, faxes and other communications from JP Freire, Jahan Wilcox, Lincoln Ferguson, John Konkus, or Elizabeth Bowman to Administrator Scott Pruitt, or from Administrator Pruitt to any of these individuals, that mention, describe, or include the following subject matters:
 - a. Preparation for interviews, or other engagements, with media outlets and media representatives, including but not limited to talking points or briefing materials.³
 - b. Press releases.
 - c. The science of climate change.
 - d. Factual information about coal industry jobs.
 - e. Electric grid reliability.
 - f. Factual information provided by individuals, corporations, or other entities external to the Environmental Protection Agency.
 - g. Changes to the content of EPA public-facing websites.
 - h. Sierra Club.

³"Media" refers to all forms of media, including print, television, radio, podcasts, or online-only publications.

This request includes any responsive communication that is or was on any system or device, computer, phone, smartphone, tablet, email account, cloud, server or other communication system either personal or business that is or was owned or operated by the individuals listed above or otherwise established for the purposes of communicating with these individuals.

This request includes all emails or other communications from any personal account operated by the individuals above which have been forwarded into an EPA government email account.

This request applies to all email accounts assigned to or operated by the above individuals, whether on an official EPA email address or server or not, that relate to official business of EPA. This request applies to so-called "alias" email accounts that may or may not include the name of the individual in the email address.

EXEMPT RECORDS

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

If EPA denies all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information and notify us of your appeal procedures available under the law.

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.").

Please provide all records in an electronic .pdf format that is text-searchable and OCR-formatted. Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or "batched," .pdf file. Please segregate documents responsive to request (1) above from documents responsive to request (2).

RECORD DELIVERY

We appreciate a prompt determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Please email copies of the requested records to the e-mail address below. Please deliver documents that are not available

in an electronic format to the physical address below. Failure to comply within the statutory timeframe may result in Sierra Club filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials.

Deliver electronic documents to:

Elena Saxonhouse
elena.saxonhouse@sierraclub.org

Deliver other documents to:

Elena Saxonhouse
Sierra Club - Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612

Please send documents on a rolling basis. EPA's search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104 (describing response deadlines).

FEE WAIVER REQUEST

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). Sierra Club is the nation's oldest grassroots organization with more than 2.9 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy and clean water. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.⁴

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D.

⁴ For a recent example, see FOIA Request Reference No. EPA-HQ-2017-2172 (fee letter waiver received Jan. 9, 2017).

Mass. 1984) (fee waiver provision intended “to prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars, and non-profit public interest groups.”).

As explained below, this FOIA request satisfies the factors listed in EPA’s governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute – that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records specifically concerns identifiable “operations and activities of the government.”

The requested records relate to the interactions between recently appointed EPA communications staff and the media, and the discussions between these employees and Administrator Pruitt regarding his public communications and other information EPA provides to the public. These activities are unquestionably “identifiable operations or activities of the government.”

2. The disclosure of the requested documents would be meaningfully informative and “likely to contribute to an understanding of Federal government operations or activities.”

The activities of EPA’s communications and public affairs staff, including their coordination with outside groups and individuals, and their discussions with Administrator Pruitt, are likely to shed light on a variety of issues of crucial public interest. As described further below, these include, among other topics, (1) the sources of specious information that Administrator Pruitt and others at EPA have shared on factual matters ranging from climate science to coal industry statistics; (2) EPA’s role in lobbying news organizations to take positions at odds with existing EPA policy; (3) politically-motivated changes to factual information on the agency’s website, which is a key source of public information on environmental matters. Sierra Club members and the public at large are gravely concerned about the spread of misinformation by this Administration, its anti-regulatory agenda, and its close ties to polluting industries.⁵

⁵ Brady Dennis & Steve Mufson, *Thousands of emails detail EPA head’s close ties to fossil fuel industry*, WASHINGTON POST (Feb. 22, 2017), <https://www.washingtonpost.com/news/energy-environment/wp/2017/02/22/oklahoma-attorney-generals-office-releases-7500-pages-of-emails-between-scott-pruitt-and-fossil-fuel-industry/>; Alex Guillen & Esther Whieldon, *Energy executives, secretive nonprofit raise money to back Pruitt*, POLITICO (Jan. 6, 2017), <http://www.politico.com/story/2017/01/scott-pruitt-epa-nonprofit-backers-233306>; Coral Davenport & Eric Lipton, *Trump Picks Scott Pruitt, Climate Change Denialist, to Lead E.P.A.*, NEW YORK TIMES (Dec. 7, 2016), <https://www.nytimes.com/2016/12/07/us/politics/scott-pruitt-epa-trump.html>; Eric Lipton, *Energy Firms in Secretive Alliance With Attorneys General* (Dec. 6, 2014), NEW YORK TIMES,

Once the requested documents are made available, Sierra Club will analyze them and present its findings to its members and online activists and the general public in a manner that will meaningfully enhance the public's understanding of EPA's activities. The requested records are not otherwise in the public domain and are not accessible other than through a FOIA request. The documents requested will thus be "meaningfully informative" and "likely to contribute" to an understanding of EPA's operations.

3. The disclosure would contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Sierra Club has longstanding experience and expertise in the subject area of the FOIA requests, including issues related to government accountability and transparency, the Clean Air Act, Clean Water Act, climate policy, the protection of the natural environment, and the development and use of energy resources.

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, including, such as: analysis and distribution to the media, distribution through publication and mailing, posting on its website, emailing and list serve distribution to our members across the U.S., and via public meetings and events. Every year the Sierra Club website receives 26,298,200 unique visits and over 30 million page views; on average, the site gets 72,049 visits per day. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3 million people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on Sierra Club's web pages, such as our [Beyond Coal Campaign](#) portal, our [Clean Energies Solutions](#) portal and our press releases.⁶

<https://www.nytimes.com/2014/12/07/us/politics/energy-firms-in-secretive-alliance-with-attorneys-general.html>.

⁶ For example, Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. See Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon, <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>. Sierra Club also recently publicized the results of its FOIA requests regarding agency job freeze, a story that was picked up by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration's hiring freeze*, The Washington Post, <https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc->

Sierra Club intends to share the information received from this FOIA request with our impacted members across the country, the media and our allies who share a common interest in the operations of the EPA under the new Administrator.

Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the “public-at-large.”

4. The disclosure would contribute “significantly” to public understanding of government operations or activities.

The records requested would shed light on a matter of considerable public interest and concern: EPA’s approach to public information about climate change and other factual matters. Throughout his tenure, Administrator Pruitt has made statements to the media that are inconsistent with well-established scientific facts, and other factual records.⁷ Public concern has also arisen over EPA public affairs staff’s removal of information about the science and impacts of climate change from the agency’s website, and other website changes.⁸ Finally, the agency is suspected of using its resources to encourage outside sources to lobby for specific policy outcomes.⁹ Disclosure of the records requested above will significantly enhance the public’s understanding of these activities.

[because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e](https://www.washingtonpost.com/news/energy-environment/wp/2017/04/28/epa-website-removes-climate-science-site-from-public-view-after-two-decades/?utm_term=.6c2e70d8581e).

⁷ Michael Biesecker and Seth Borenstein, *AP FACT CHECK: EPA chief gets his facts wrong on coal jobs*, <https://apnews.com/96def67d57354184879843b4f0d42df8/AP-FACT-CHECK:-EPA-chief-gets-his-facts-wrong-on-coal-jobs>, *Pruitt says coal losses make the grid vulnerable. Not really*, E&E NEWS (June 7, 2017), <https://www.eenews.net/stories/1060055661>, *Scientists, Leaders Slam Scott Pruitt’s Televised Climate Denial*, <http://climatenexus.org/messaging-communication/current-events/scientists-leaders-slam-scott-pruitt%E2%80%99s-televi-sed-climate>, Letter from K. Seitter, Executive Director, American Meteorological Society, to Administrator Pruitt (Mar. 13, 2017), <https://www.ametsoc.org/ams/index.cfm/about-ams/ams-position-letters/letter-to-epa-administrator-pruitt-on-climate-change/>.

⁸ Chris Mooney & Juliet Eilperin, *THE WASHINGTON POST*, *EPA Website Removes Climate Science Site from Public View After Two Decades* (Apr. 29, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/04/28/epa-website-removes-climate-science-site-from-public-view-after-two-decades/?utm_term=.55fda09f8e4e; *EPA Kicks Off Website Updates* (Apr. 28, 2017), <https://www.epa.gov/newsreleases/epa-kicks-website-updates>; *EPA, This Page is Being Updated* (last visited June 9, 2017), <https://www.epa.gov/sites/production/files/signpost/cc.html> (redirection from www.epa.gov/climatechange); *Climate Change Page, January 19, 2017 Snapshot* (last visited June 9, 2017), <https://19january2017snapshot.epa.gov/climatechange.html>,

⁹ Kevin Kalhoeffler & Lisa Hymas, *EPA reportedly helped Paris agreement opponents place op-eds in newspapers* (June 1, 2017), <https://www.mediamatters.org/research/2017/06/01/EPA-reportedly-helped-Paris-agreement-opponents-place-op-eds-in-newspapers/216727>.

5. The requester has no commercial interest that would be furthered by the requested disclosure.¹⁰

Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

Sierra Club respectfully requests that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information. In the event that your agency denies a fee waiver, please send a written explanation for the denial. Please do not incur expenses beyond \$250 without first contacting our office for explicit authorization.

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply.

/s/ Elena Saxonhouse

Elena Saxonhouse

Senior Attorney

Sierra Club - Environmental Law Program

2101 Webster Street, Suite 1300

Oakland, CA 94612

elena.saxonhouse@sierraclub.org

(415) 977-5765

¹⁰ Because Sierra Club has no commercial interest, it is not necessary to consider the final factor for a fee waiver, which compares the magnitude of an identified commercial interest to the public interest in disclosure.

EXHIBIT B



July 21, 2017

VIA FOIAONLINE.REGULATIONS.GOV
U.S. Environmental Protection Agency Headquarters

Re: Freedom of Information Act Request: Communications of EPA Public Affairs and Communications Staff

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, as amended ("FOIA"), from Sierra Club, a nonprofit organization whose purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

REQUESTED RECORDS¹

Sierra Club requests Records of the following type in the possession, custody, or control of the U.S. Environmental Protection Agency ("EPA") for the period June 21, 2017 through the date of this request.

1. All emails, text messages, faxes and other communications from the EPA employees listed in 1.a below to individuals employed at the entities listed in 1.b below; or from individuals employed by the organizations listed in 1.b to the EPA employees listed in 1.a. To assist with your search, we have provided the domain names for official e-mail

¹ "Records" means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, emails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described below at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of EPA, National Headquarters and all of its Offices, Regions and other subdivisions.

accounts for the external entities. However, we are not limiting our request to e-mails to or from such accounts as we are also seeking text messages, faxes, and any e-mails from individuals employed by these external organization's personal accounts that were sent to the listed EPA employees that address EPA business.

- a. Employees
 - i. JP Freire
 - ii. Jahan Wilcox
 - iii. Lincoln Ferguson
 - iv. John Konkus
 - v. Elizabeth Bowman
 - b. External organizations
 - i. Need to Know Network (ntknetwork.com)
 - ii. America Rising (americarisingpac.org; arsquared.org)
 - iii. The Washington Times (washingtontimes.com)
 - iv. Boston Herald (bostonherald.com)
 - v. USA Today (usatoday.com)
 - vi. The News Journal (delawareonline.com)
 - vii. The Jackson Sun (jacksonsun.com)
 - viii. The Hill (thehill.com)
 - ix. Fox News (foxnews.com)
 - x. Breitbart News (breitbart.com)
 - xi. United States Congress (mail.senate.gov; mail.house.gov)
2. All emails, text messages, faxes and other communications from JP Freire, Jahan Wilcox, Lincoln Ferguson, John Konkus, or Elizabeth Bowman to Administrator Scott Pruitt, or from Administrator Pruitt to any of these individuals, that mention, describe, or include the following subject matters:
- a. Preparation for interviews, or other engagements, with media outlets and media representatives, including but not limited to talking points or briefing materials.²
 - b. Press releases.
 - c. Factual information provided by individuals, corporations, or other entities external to the Environmental Protection Agency.
 - d. Changes to the content of EPA public-facing websites.
 - e. Sierra Club.

This request includes any responsive communication that is or was on any system or device, computer, phone, smartphone, tablet, email account, cloud, server or other communication system either personal or business that is or was owned or operated by the individuals listed above or otherwise established for the purposes of communicating with these individuals.

²"Media" refers to all forms of media, including print, television, radio, podcasts, or online-only publications.

This request includes all emails or other communications from any personal account operated by the individuals above which have been forwarded into an EPA government email account.

This request applies to all email accounts assigned to or operated by the above individuals, whether on an official EPA email address or server or not, that relate to official business of EPA. This request applies to so-called "alias" email accounts that may or may not include the name the individual in the email address.

EXEMPT RECORDS

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

If EPA denies all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information and notify us of your appeal procedures available under the law.

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.").

Please provide all records in an electronic .pdf format that is text-searchable and OCR-formatted. Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or "batched," .pdf file.

RECORD DELIVERY

We appreciate a prompt determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Please email copies of the requested records to the e-mail address below. Please deliver documents that are not available in an electronic format to the physical address below. Failure to comply within the statutory timeframe may result in Sierra Club filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials.

Deliver electronic documents to:
Elena Saxonhouse

elena.saxonhouse@sierraclub.org

Deliver other documents to:

Elena Saxonhouse
Sierra Club - Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612

Please send documents on a rolling basis. EPA's search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104 (describing response deadlines).

FEE WAIVER REQUEST

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). Sierra Club is the nation's oldest grassroots organization with more than 2.9 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy and clean water. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.³

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups.").

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements for a fee waiver under the FOIA

³ For a recent example, see FOIA Request Reference No. EPA-HQ-2017-8568 (fee letter waiver received June 28, 2017).

statute – that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records specifically concerns identifiable “operations and activities of the government.”

The requested records relate to the interactions between recently appointed EPA communications staff and the media, and the discussions between these employees and Administrator Pruitt regarding his public communications and other information EPA provides to the public. These activities are unquestionably “identifiable operations or activities of the government.”

2. The disclosure of the requested documents would be meaningfully informative and “likely to contribute to an understanding of Federal government operations or activities.”

The requested communications between Administrator Pruitt and his public affairs staff are likely to shed light on a variety of issues of crucial public interest. As described further below, these include, among other topics, (1) the sources of specious information that Administrator Pruitt and others at EPA have shared on factual matters ranging from climate science to coal industry statistics; (2) EPA’s role in lobbying news organizations to take positions at odds with existing EPA policy; (3) politically-motivated changes to factual information on the agency’s website, which is a key source of public information on environmental matters. Sierra Club members and the public at large are gravely concerned about the spread of misinformation by this Administration, its anti-regulatory agenda, and its close ties to polluting industries.⁴

Once the requested documents are made available, Sierra Club will analyze them and present its findings to its members and online activists and the general public in a manner that will meaningfully enhance the public’s understanding of EPA’s activities. The requested records are not otherwise in the public domain and are not accessible other than through a FOIA request.

⁴ Brady Dennis & Steve Mufson, *Thousands of emails detail EPA head’s close ties to fossil fuel industry*, WASHINGTON POST (Feb. 22, 2017), <https://www.washingtonpost.com/news/energy-environment/wp/2017/02/22/oklahoma-attorney-generals-office-releases-7500-pages-of-emails-between-scott-pruitt-and-fossil-fuel-industry/>; Alex Guillen & Esther Whieldon, *Energy executives, secretive nonprofit raise money to back Pruitt*, POLITICO (Jan. 6, 2017), <http://www.politico.com/story/2017/01/scott-pruitt-epa-nonprofit-backers-233306>; Coral Davenport & Eric Lipton, *Trump Picks Scott Pruitt, Climate Change Denialist, to Lead E.P.A.*, NEW YORK TIMES (Dec. 7, 2016), <https://www.nytimes.com/2016/12/07/us/politics/scott-pruitt-epa-trump.html>; Eric Lipton, *Energy Firms in Secretive Alliance With Attorneys General* (Dec. 6, 2014), NEW YORK TIMES, <https://www.nytimes.com/2014/12/07/us/politics/energy-firms-in-secretive-alliance-with-attorneys-general.html>.

The documents requested will thus be “meaningfully informative” and “likely to contribute” to an understanding of EPA’s operations.

3. The disclosure would contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Sierra Club has longstanding experience and expertise in the subject area of the FOIA requests, including issues related to government accountability and transparency, the Clean Air Act, Clean Water Act, climate policy, the protection of the natural environment, and the development and use of energy resources.

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, such as: analysis and distribution to the media, distribution through publication and mailing, posting on its website, emailing and list serve distribution to our members across the U.S., and via public meetings and events. Every year the Sierra Club website receives 26,298,200 unique visits and over 30 million page views; on average, the site gets 72,049 visits per day. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3 million people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on Sierra Club’s web pages, such as our [Beyond Coal Campaign](#) portal, our [Clean Energies Solutions](#) portal and our press releases.⁵

Sierra Club intends to share the information received from this FOIA request with our impacted members across the country, the media and our allies who share a common interest in the operations of the EPA under the new Administrator.

⁵ For example, Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. See Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon, <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>. Sierra Club also recently publicized the results of its FOIA requests regarding agency job freezes, a story that was picked up by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration’s hiring freeze*, The Washington Post, https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e.

Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the “public-at-large.”

4. The disclosure would contribute “significantly” to public understanding of government operations or activities.

The records requested would shed light on a matter of considerable public interest and concern: EPA’s approach to public information about climate change and other factual matters. Throughout his tenure, Administrator Pruitt has made statements to the media that are inconsistent with well-established scientific facts, and other factual records.⁶ Public concern has also arisen over EPA public affairs staff’s removal of information about the science and impacts of climate change from the agency’s website, and other website changes.⁷ Finally, the agency is suspected of using its resources to encourage outside sources to lobby for specific policy outcomes.⁸ Disclosure of the records requested above will significantly enhance the public’s understanding of these activities.

⁶ Michael Biesecker and Seth Borenstein, *AP FACT CHECK: EPA chief gets his facts wrong on coal jobs*, <https://apnews.com/96def67d57354184879843b4f0d42df8/AP-FACT-CHECK:-EPA-chief-gets-his-facts-wrong-on-coal-jobs>, *Pruitt says coal losses make the grid vulnerable. Not really*, E&E NEWS (June 7, 2017), <https://www.eenews.net/stories/1060055661>, Scientists, Leaders Slam Scott Pruitt’s Televised Climate Denial, <http://climatenexus.org/messaging-communication/current-events/scientists-leaders-slam-scott-pruitt%E2%80%99s-televised-climate>, Letter from K. Seitter, Executive Director, American Meteorological Society, to Administrator Pruitt (Mar. 13, 2017), <https://www.ametsoc.org/ams/index.cfm/about-ams/ams-position-letters/letter-to-epa-administrator-pruitt-on-climate-change/>.

⁷ Chris Mooney & Juliet Eilperin, *THE WASHINGTON POST*, *EPA Website Removes Climate Science Site from Public View After Two Decades* (Apr. 29, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/04/28/epa-website-removes-climate-science-site-from-public-view-after-two-decades/?utm_term=.55fda09f8e4e; EPA Kicks Off Website Updates (Apr. 28, 2017), <https://www.epa.gov/newsreleases/epa-kicks-website-updates>; EPA, This Page is Being Updated (last visited June 9, 2017), <https://www.epa.gov/sites/production/files/signpost/cc.html> (redirection from www.epa.gov/climatechange); Climate Change Page, January 19, 2017 Snapshot (last visited June 9, 2017), https://19january2017snapshot.epa.gov/climatechange_.html,

⁸ Kevin Kalhoeffler & Lisa Hymas, *EPA reportedly helped Paris agreement opponents place op-eds in newspapers* (June 1, 2017), <https://www.mediamatters.org/research/2017/06/01/EPA-reportedly-helped-Paris-agreement-opponents-place-op-eds-in-newspapers/216727>.

5. The requester has no commercial interest that would be furthered by the requested disclosure.⁹

Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

Sierra Club respectfully requests that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information. In the event that your agency denies a fee waiver, please send a written explanation for the denial. Please do not incur expenses beyond \$250 without first contacting our office for explicit authorization.

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply.

/s/ Elena Saxonhouse

Elena Saxonhouse

Senior Attorney

Sierra Club - Environmental Law Program

2101 Webster Street, Suite 1300

Oakland, CA 94612

elena.saxonhouse@sierraclub.org

(415) 977-5765

⁹ Because Sierra Club has no commercial interest, it is not necessary to consider the final factor for a fee waiver, which compares the magnitude of an identified commercial interest to the public interest in disclosure.

EXHIBIT C



July 21, 2017

VIA FOIAONLINE.REGULATIONS.GOV
U.S. Environmental Protection Agency Headquarters

Re: Freedom of Information Act Request: Communications of EPA Public Affairs and Communications Staff

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, as amended ("FOIA"), from Sierra Club, a nonprofit organization whose purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

REQUESTED RECORDS¹

Sierra Club requests Records of the following type in the possession, custody, or control of the U.S. Environmental Protection Agency ("EPA") for the period January 20, 2017 through the date of this request.

1. All emails, text messages, faxes and other communications from the EPA employees listed in 1.a below to individuals employed at the entities listed in 1.b below; or from individuals employed by the organizations listed in 1.b to the EPA employees listed in 1.a. To assist with your search, we have provided the domain names for official e-mail

¹ "Records" means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, emails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described below at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of EPA, National Headquarters and all of its Offices, Regions and other subdivisions.

accounts for the external entities. However, we are not limiting our request to e-mails to or from such accounts as we are also seeking text messages, faxes, and any e-mails from individuals employed by these external organization's personal accounts that were sent to the listed EPA employees that address EPA business.

- a. Employees
 - i. Amy Graham
 - ii. Daisy Letendre

 - b. External organizations
 - i. Need to Know Network (ntknetwork.com)
 - ii. America Rising (americarisingpac.org; arsquared.org)
 - iii. The Washington Times (washingtontimes.com)
 - iv. Boston Herald (bostonherald.com)
 - v. USA Today (usatoday.com)
 - vi. The News Journal (delawareonline.com)
 - vii. The Jackson Sun (jacksonsun.com)
 - viii. The Hill (thehill.com)
 - ix. Fox News (foxnews.com)
 - x. Breitbart News (breitbart.com)
 - xi. United States Congress (mail.senate.gov; mail.house.gov)
2. All emails, text messages, faxes and other communications from Amy Graham or Daily Letendre to Administrator Scott Pruitt, or from Administrator Pruitt to either of these individuals, that mention, describe, or include the following subject matters:
- a. Preparation for interviews, or other engagements, with media outlets and media representatives, including but not limited to talking points or briefing materials.²
 - b. Press releases.
 - c. The science of climate change.
 - d. Factual information about coal industry jobs.
 - e. Electric grid reliability.
 - f. Factual information provided by individuals, corporations, or other entities external to the Environmental Protection Agency.
 - g. Changes to the content of EPA public-facing websites.
 - h. Sierra Club.

This request includes any responsive communication that is or was on any system or device, computer, phone, smartphone, tablet, email account, cloud, server or other communication system either personal or business that is or was owned or operated by the individuals listed above or otherwise established for the purposes of communicating with these individuals.

²"Media" refers to all forms of media, including print, television, radio, podcasts, or online-only publications.

This request includes all emails or other communications from any personal account operated by the individuals above which have been forwarded into an EPA government email account.

This request applies to all email accounts assigned to or operated by the above individuals, whether on an official EPA email address or server or not, that relate to official business of EPA. This request applies to so-called "alias" email accounts that may or may not include the name the individual in the email address.

EXEMPT RECORDS

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

If EPA denies all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information and notify us of your appeal procedures available under the law.

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.").

Please provide all records in an electronic .pdf format that is text-searchable and OCR-formatted. Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or "batched," .pdf file. Please segregate documents responsive to request (1) above from documents responsive to request (2).

RECORD DELIVERY

We appreciate a prompt determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Please email copies of the requested records to the e-mail address below. Please deliver documents that are not available in an electronic format to the physical address below. Failure to comply within the statutory timeframe may result in Sierra Club filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials.

Deliver electronic documents to:

Elena Saxonhouse
elena.saxonhouse@sierraclub.org

Deliver other documents to:

Elena Saxonhouse
Sierra Club - Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612

Please send documents on a rolling basis. EPA's search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. See generally 40 C.F.R. § 2.104 (describing response deadlines).

FEE WAIVER REQUEST

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). Sierra Club is the nation's oldest grassroots organization with more than 2.9 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy and clean water. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.³

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups.").

³ For a recent example, see FOIA Request Reference No. EPA-HQ-2017-8568 (fee letter waiver received June 28, 2017).

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute – that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records specifically concerns identifiable “operations and activities of the government.”

The requested records relate to the interactions between recently appointed EPA communications staff and the media, and the discussions between these employees and Administrator Pruitt regarding his public communications and other information EPA provides to the public. These activities are unquestionably “identifiable operations or activities of the government.”

2. The disclosure of the requested documents would be meaningfully informative and “likely to contribute to an understanding of Federal government operations or activities.”

The activities of EPA's communications and public affairs staff, including their coordination with outside groups and individuals, and their discussions with Administrator Pruitt, are likely to shed light on a variety of issues of crucial public interest. As described further below, these include, among other topics, (1) the sources of specious information that Administrator Pruitt and others at EPA have shared on factual matters ranging from climate science to coal industry statistics; (2) EPA's role in lobbying news organizations to take positions at odds with existing EPA policy; (3) politically-motivated changes to factual information on the agency's website, which is a key source of public information on environmental matters. Sierra Club members and the public at large are gravely concerned about the spread of misinformation by this Administration, its anti-regulatory agenda, and its close ties to polluting industries.⁴

⁴ Brady Dennis & Steve Mufson, *Thousands of emails detail EPA head's close ties to fossil fuel industry*, WASHINGTON POST (Feb. 22, 2017), <https://www.washingtonpost.com/news/energy-environment/wp/2017/02/22/oklahoma-attorney-generals-office-releases-7500-pages-of-emails-between-scott-pruitt-and-fossil-fuel-industry/>; Alex Guillen & Esther Whieldon, *Energy executives, secretive nonprofit raise money to back Pruitt*, POLITICO (Jan. 6, 2017), <http://www.politico.com/story/2017/01/scott-pruitt-epa-nonprofit-backers-233306>; Coral Davenport & Eric Lipton, *Trump Picks Scott Pruitt, Climate Change Denialist, to Lead E.P.A.*, NEW YORK TIMES (Dec. 7, 2016), <https://www.nytimes.com/2016/12/07/us/politics/scott-pruitt-epa-trump.html>; Eric Lipton, *Energy Firms in Secretive Alliance With Attorneys General* (Dec. 6, 2014), NEW YORK TIMES, <https://www.nytimes.com/2014/12/07/us/politics/energy-firms-in-secretive-alliance-with-attorneys-general.html>.

Once the requested documents are made available, Sierra Club will analyze them and present its findings to its members and online activists and the general public in a manner that will meaningfully enhance the public's understanding of EPA's activities. The requested records are not otherwise in the public domain and are not accessible other than through a FOIA request. The documents requested will thus be "meaningfully informative" and "likely to contribute" to an understanding of EPA's operations.

3. The disclosure would contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Sierra Club has longstanding experience and expertise in the subject area of the FOIA requests, including issues related to government accountability and transparency, the Clean Air Act, Clean Water Act, climate policy, the protection of the natural environment, and the development and use of energy resources.

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, such as: analysis and distribution to the media, distribution through publication and mailing, posting on its website, emailing and list serve distribution to our members across the U.S., and via public meetings and events. Every year the Sierra Club website receives 26,298,200 unique visits and over 30 million page views; on average, the site gets 72,049 visits per day. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3 million people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on Sierra Club's web pages, such as our [Beyond Coal Campaign](#) portal, our [Clean Energies Solutions](#) portal and our press releases.⁵

⁵ For example, Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. See Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon, <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>. Sierra Club also recently publicized the results of its FOIA requests regarding agency job freezes, a story that was picked up by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration's hiring freeze*, The Washington Post, https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e.

Sierra Club intends to share the information received from this FOIA request with our impacted members across the country, the media and our allies who share a common interest in the operations of the EPA under the new Administrator.

Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the “public-at-large.”

4. The disclosure would contribute “significantly” to public understanding of government operations or activities.

The records requested would shed light on a matter of considerable public interest and concern: EPA’s approach to public information about climate change and other factual matters. Throughout his tenure, Administrator Pruitt has made statements to the media that are inconsistent with well-established scientific facts, and other factual records.⁶ Public concern has also arisen over EPA public affairs staff’s removal of information about the science and impacts of climate change from the agency’s website, and other website changes.⁷ Finally, the agency is suspected of using its resources to encourage outside sources to lobby for specific policy outcomes.⁸ Disclosure of the records requested above will significantly enhance the public’s understanding of these activities.

⁶ Michael Biesecker and Seth Borenstein, *AP FACT CHECK: EPA chief gets his facts wrong on coal jobs*, <https://apnews.com/96def67d57354184879843b4f0d42df8/AP-FACT-CHECK:-EPA-chief-gets-his-facts-wrong-on-coal-jobs>, *Pruitt says coal losses make the grid vulnerable. Not really*, E&E NEWS (June 7, 2017), <https://www.eenews.net/stories/1060055661>, Scientists, Leaders Slam Scott Pruitt’s Televised Climate Denial, <http://climatenexus.org/messaging-communication/current-events/scientists-leaders-slam-scott-pruitt%E2%80%99s-televised-climate>, Letter from K. Seitter, Executive Director, American Meteorological Society, to Administrator Pruitt (Mar. 13, 2017), <https://www.ametsoc.org/ams/index.cfm/about-ams/ams-position-letters/letter-to-epa-administrator-pruitt-on-climate-change/>.

⁷ Chris Mooney & Juliet Eilperin, *THE WASHINGTON POST*, *EPA Website Removes Climate Science Site from Public View After Two Decades* (Apr. 29, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/04/28/epa-website-removes-climate-science-site-from-public-view-after-two-decades/?utm_term=.55fda09f8e4e; EPA Kicks Off Website Updates (Apr. 28, 2017), <https://www.epa.gov/newsreleases/epa-kicks-website-updates>; EPA, This Page is Being Updated (last visited June 9, 2017), <https://www.epa.gov/sites/production/files/signpost/cc.html> (redirection from www.epa.gov/climatechange); Climate Change Page, January 19, 2017 Snapshot (last visited June 9, 2017), https://19january2017snapshot.epa.gov/climatechange_.html,

⁸ Kevin Kalhoeffler & Lisa Hymas, *EPA reportedly helped Paris agreement opponents place op-eds in newspapers* (June 1, 2017), <https://www.mediamatters.org/research/2017/06/01/EPA-reportedly-helped-Paris-agreement-opponents-place-op-eds-in-newspapers/216727>.

5. The requester has no commercial interest that would be furthered by the requested disclosure.⁹

Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

Sierra Club respectfully requests that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information. In the event that your agency denies a fee waiver, please send a written explanation for the denial. Please do not incur expenses beyond \$250 without first contacting our office for explicit authorization.

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply.

/s/ Elena Saxonhouse

Elena Saxonhouse

Senior Attorney

Sierra Club - Environmental Law Program

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(415) 977-5765

⁹ Because Sierra Club has no commercial interest, it is not necessary to consider the final factor for a fee waiver, which compares the magnitude of an identified commercial interest to the public interest in disclosure.

EXHIBIT D



January 8, 2018

VIA FOIAONLINE.REGULATIONS.GOV
U.S. Environmental Protection Agency Headquarters

Re: Freedom of Information Act Request:

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, as amended ("FOIA"), from Sierra Club.

REQUESTED RECORDS¹

Sierra Club requests the following records in the possession, custody, or control of the U.S. Environmental Protection Agency ("EPA") for the period January 20, 2017 up through and including the date of your search for records.

1. All records of communications between Jahan Wilcox, EPA Office of Public Affairs, and:
 - a. Allan Blutstein
 - b. Joseph Pounder (aka Joe Pounder)
 - c. Matthew Rhoades (aka Matt Rhoades)

2. All records created, received, or maintained by Jahan Wilcox that include the following terms:
 - Definers
 - Definers Public Affairs

¹ "Records" means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, emails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described below at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of EPA, National Headquarters and all of its Offices, Regions and other subdivisions.

- Definers Console
- Definers Corp
- America Rising
- America Rising Squared
- Need to Know Network
- NTK Network
- RNC
- Republican National Committee

This request includes any responsive communication that is or was on any system or device, computer, phone, smartphone, tablet, email account, cloud, server or other communication system either personal or business that is or was owned or operated by Mr. Wilcox or otherwise used for the purposes of communicating with these individuals.

For example, this request includes all emails or other communications from any personal account operated by Mr. Wilcox which have been forwarded into an EPA government email account. It also applies to all email accounts assigned to or operated by Mr. Wilcox, whether on an official EPA email address or server or not, that relate to Mr. Wilcox's activities as a federal government employee or other official business of EPA. This request applies to so-called "alias" email accounts that may or may not include the name the individual in the email address. It applies to text messages in any format from a personal or government mobile device concerning Mr. Wilcox's activities as a federal government employee, the work of an EPA contractor, or other official business of EPA.

EXEMPT RECORDS

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

If EPA denies all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information and notify us of your appeal procedures available under the law.

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.").

Please provide all records in an electronic .pdf format that is text-searchable and OCR-formatted. Portfolios and embedded files within files are not readily accessible. Please do not provide the records in a single, or “batched,” .pdf file.

RECORD DELIVERY

We appreciate a prompt determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Please email copies of the requested records to the e-mail address below. Please deliver documents that are not available in an electronic format to the physical address below. Failure to comply within the statutory timeframe may result in Sierra Club filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials.

Deliver electronic documents to:

Elena Saxonhouse
elena.saxonhouse@sierraclub.org

Deliver other documents to:

Elena Saxonhouse
Sierra Club - Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612

Please send documents on a rolling basis. EPA’s search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104 (describing response deadlines).

FEE WAIVER REQUEST

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). Sierra Club is the nation’s oldest grassroots organization with more than 2.9 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy and clean water. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.²

² For a recent example, see FOIA Request Reference No. EPA-HQ-2017-8568 (fee letter waiver received June 28, 2017).

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups.").

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements for a fee waiver under the FOIA statute – that "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records specifically concerns identifiable "operations and activities of the government."

The requested records relate to Mr. Wilcox's communications and activities as a paid employee of the EPA Office of Public Affairs, and his use of government funds and staff time. The records relate, furthermore, to EPA's relationship with outside contractors. These activities are unquestionably "identifiable operations or activities of the government."

2. The disclosure of the requested documents would be meaningfully informative and "likely to contribute to an understanding of Federal government operations or activities."

The requested records concern Mr. Wilcox's relationship and coordination with highly partisan entities, which may constitute inappropriate or unlawful use of appropriations. Reporting by *Mother Jones* recently revealed that EPA had contracted with Definers Public Affairs, a firm that was founded by the same people and bears the same address as America Rising, a clearly partisan organization whose "sole purpose is to hold Democrats accountable and expose any hidden hypocrisy," according to its website. One of the founders of Definers Public Affairs, Allan Blutstein, has submitted multiple FOIA requests for the communications of career EPA employees who expressed opposition to Administrator Pruitt's deregulatory agenda.

Once the requested documents are made available, Sierra Club will analyze them and present its findings to its members and online activists and the general public in a manner that will meaningfully enhance the public's understanding of EPA's activities. The requested records are not otherwise in the public domain and are not accessible other than through a FOIA request. The documents requested will thus be "meaningfully informative" and "likely to contribute" to an understanding of EPA's operations.

3. The disclosure would contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Sierra Club has longstanding experience and expertise in the subject area of the FOIA requests, including issues related to government accountability and transparency, and the activities that properly fall within the mission of the EPA.

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, such as: analysis and distribution to the media, distribution through publication and mailing, posting on its website, emailing and list serve distribution to our members across the U.S., and via public meetings and events. Every year the Sierra Club website receives 26,298,200 unique visits and over 30 million page views; on average, the site gets 72,049 visits per day. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3 million people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system³

Sierra Club intends to share the information received from this FOIA request with the general public, our impacted members across the country, the media and our allies who share a common interest in the operations of the EPA under the new Administrator.

³ For example, Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. See Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon, <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>. Sierra Club also recently publicized the results of its FOIA requests regarding agency job freezes, a story that was picked up by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration's hiring freeze*, The Washington Post, https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e.

Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the “public-at-large.”

4. The disclosure would contribute “significantly” to public understanding of government operations or activities.

The records requested would shed light on a matter of considerable public interest and concern: EPA political staff’s coordination with a Republican public affairs firm and other highly partisan organizations for partisan activities. This staff time, and EPA contracts, are paid for by taxpayer dollars and should be used for activities that advance EPA’s mission, not for partisan propaganda or opposition research. Disclosure of the records requested above will significantly enhance the public’s understanding of the activities of EPA’s Office of Public Affairs in relation to Definers Public Affairs and other right-wing organizations.

5. The requester has no commercial interest that would be furthered by the requested disclosure.⁴

Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

Sierra Club respectfully requests that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information. In the event that your agency denies a fee waiver, please send a written explanation for the denial. Please do not incur expenses beyond \$250 without first contacting our office for explicit authorization.

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply.

⁴ Because Sierra Club has no commercial interest, the Club also satisfies the final factor for a fee waiver, which compares the magnitude of an identified commercial interest to the public interest in disclosure.

/s/ Elena Saxonhouse

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