



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

May 31, 2019

Via Email

Ms. Elena Saxonhouse
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
elena.saxonhouse@sierraclub.org

Re: Ninth Interim Production, *Sierra Club v. EPA* (3:18-cv-3472); FOIA Requests EPA-HQ-2017-009482, EPA-HQ-2017-009615, EPA-HQ-2017-009684, and EPA-HQ-2018-007559

Dear Ms. Saxonhouse,

This letter concerns an interim production of records responsive to the above-referenced case and a response to questions concerning withheld records. On April 25, 2019, you emailed Assistant U.S. Attorney Adrienne Zack a document containing questions regarding withholdings asserted by the Environmental Protection Agency (EPA or Agency) in its “Tier 1” and “Tier 2” productions. Today, after further review of records described in more detail below, the Agency is producing 3 records that were initially withheld in full and 1 record that was initially withheld in part.

The records are released as individual PDF documents organized by custodian in the Box.com folder titled “Sierra Club v. EPA, 18-cv-3472, ND Cal. - FOIA Productions.” The released records will also be publicly available on FOIAonline at <https://foiaonline.gov/foiaonline/action/public/home> by searching the FOIA request number, EPA-HQ-2017-009482.

Below is the Agency’s response to your questions concerning categories of withholdings.

Happy Hour Thread(s)¹

Documents

ED_002061_00156320,, ED_002061_00156570, ED_002061_00156575, ED_002061_00156578, ED_002061_00156580, ED_002061_00156586, ED_002061_00156588, ED_002061_00156590, ED_002061_00156591, ED_002061_00156592, ED_002061_00156598, ED_002061_00156599, ED_002061_00156600, ED_002061_00156605, ED_002061_00156620, ED_002061_00156623, ED_002061_00156626, ED_002061_00156683, ED_002061_00157606, ED_002061_00157620, and ED_002061_00157667

¹ These are the headings used in your April 25, 2019 communication. The Agency notes that ED_002061_00156520 and ED_002061_00156522 are included on Sierra Club’s initial list as part of the happy hour thread(s), but these two documents are actually internal draft documents. EPA presumes that Sierra Club did not mean to include them and therefore does not address the withholdings asserted with respect to those documents.

Agency Response

These emails are various branches of two email chains among personal friends of an EPA employee planning a happy hour social event. Although the emails contain correspondence with individuals with email addresses from selected domains, the communications do not concern or discuss EPA business. The privacy interest of the EPA employee and the other email participants is significant and outweighs any alleged public interest. The Agency continues to withhold these records.

Perotta/ Jackson /Lyons Communications re: Voicemail

Documents

ED_002061_00125451, ED_002061_00125641, and ED_002061_00139863

Agency Response

These communications concern forwarding a voicemail Andrew Wheeler received to his phone at his former employer when he was undergoing confirmation to become EPA Deputy Administrator. This information may have an ongoing security interest as well as a privacy interest for persons involved in any ongoing investigation.

Wehrum Financial Documents

Documents

ED_002061_00180434, ED_002061_00180431, ED_002061_00180432, ED_002061_00180421, ED_002061_00180422, and ED_002061_00183113

Agency Response

These documents concern Bill Wehrum's benefit and retirement account information from his previous employer. Mr. Wehrum was retrieving this information and making the necessary arrangements employees make when leaving a job. The details of his Mr. Wehrum's benefit payment options, rollover plans, and related materials are personal financial matters with no public interest in disclosure.

Correspondence with Arizona DEQ re: NIWTP

Documents

ED_002061_00174301 (parent email) – redacted portion, and ED_002061_00174302

Agency Response

These documents related to ongoing litigation involving the United States and the State of Arizona and were withheld under FOIA Exemptions 5 and 7(a). Upon review of additional facts surrounding the underlying litigation, EPA is now releasing these documents to you now.

“Berkeley pits” correspondence

Documents

ED_002061_00114830, and ED_002061_00114831

Agency Response

These documents are being produced to you now. The Agency has determined that they are not associated with an ongoing enforcement matter. You will see that the email ED_002061_00114830 was already substantively produced as a part of the email thread in ED_002061_00114633.

Ringel/Cox Correspondence

Documents

ED_002061_00156807, ED_002061_00157429, ED_002061_00157430, ED_002061_00157732, and ED_002061_00157759

Agency Response

ED_002061_00157430 is an attachment with an explicit Confidential Business Information claim. The remaining documents are emails that concern submission of the CBI and may contain information that the submitting entity would consider to be CBI.

Under EPA's regulations, when information claimed as CBI is the subject of a FOIA request, EPA will initially deny the request in order to contact the affected business and the EPA legal office will complete a final administrative determination of whether the claimed CBI is entitled to confidential treatment. 40 C.F.R. § 2.204(d)(1)(i)(ii) and (e). If you would like, the Agency can initiate a CBI determination for these records.

If you have any further questions regarding this production or the additional information that has been provided, please contact Assistant U.S. Attorney Adrienne Zack at 415.436.7031.

Sincerely,

/s/ Peter Bermes

Peter Bermes
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency

CC: Andrea Issod