

THE BROWN INSTITUTE FOR MEDIA INNOVATION

February 15, 2023

RE: EXPEDITED FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

This is an expedited request by the Brown Institute for Media Innovation, MuckRock, and the California Newsroom (“Brown Institute,” “MuckRock,” and “California Newsroom”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for all submitted, denied and confirmed exceptional events related to criteria pollutants. A partial list of *Example Submissions, Demonstrations and EPA responses prepared under the 2016 Exceptional Events Rule* has been publicly posted by the EPA here: <https://www.epa.gov/air-quality-analysis/example-demonstrations-and-epa-responses-prepared-under-2016-exceptional>

Document Request

We seek copies of the following records submitted to and prepared by the EPA Regional Office between September 30, 2016, through February 15, 2023:

1. **All initial notification packages created by state, local, or tribal agencies** now held by the EPA Regional Office. By this language, we intend to include emails or any other records of communication containing, for example, the potential date of event, relevant criteria pollutant, location, and potential regulatory decision affected (such as designation, classification, attainment determination, attainment date extension, or finding of SIP inadequacy leading to SIP call). An example of an Initial Notification Summary for PM2.5 from EPA Region 9 has been attached to this request.
2. **Any acknowledgement or response from EPA to initial notifications or notification packages, as described in 40 C.F.R. 50.14 (Table 2).**
3. **All submissions of demonstrations of exceptional events related to criteria pollutants**, as submitted by state, local, or federal authorities.
4. **All subsequent responses and decisions communicated by the EPA**, including approvals, denials or requests for more information, as described in 40 C.F.R. 50.14.

We request that all of these records be produced in their native electronic formats with any attached metadata included, so long as such electronic files can be opened using standard commercially available software. If the files cannot be produced in this manner, we request that records be produced in an alternative electronic format that is text-searchable. 5 U.S.C. § 552(a)(3)(B)

Fee Waiver Request

A waiver of search and review fees is appropriate here because disclosure of the requested information is in the public interest under 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54(a), (b)(1)-(2),

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and because the request is not primarily in the Brown Institute, MuckRock, or California Newsroom's commercial interest, 45 C.F.R. §§ 5.45(a), (b)(3)(ii).

Disclosure Is in the Public Interest

Disclosure of the requested information is likely to contribute significantly to the public understanding of the regulation of air pollution, which is harmful to human health. 45 C.F.R. § 5.54(b)(1). In particular, the requested information will shed light on exceptional events, a mechanism used by regulators to account for and exclude air pollution, information which is not "already in the public domain." 45 C.F.R. § 5.54(b)(2)(i). As a nonprofit organization assisting other news media organizations on coverage of federal government policy, we have demonstrated our "ability and intention to effectively convey information to the public." 45 C.F.R. § 5.54(b)(2)(ii).

Limitation of Fees

We are also entitled to a limitation of fees because we are a member of the news media. 45 C.F.R. § 5.53(b); 5 U.S.C. § 552(a)(4)(A)(ii)(II). Accordingly, even if our application for a waiver of all fees is denied, we are entitled to a limitation of fees. As a news media requester, we are "entitled to search time, review time, and up to 100 pages of duplication" and can be charged only duplication fees after the first 100 pages or its cost equivalent. 45 C.F.R. § 5.53(b). We request that the information be provided in its native electronic format, and thus there should be no duplication fees.

Request for Expedited Processing

We also ask that the information requested be disclosed on an expedited basis. Expedited processing is appropriate here because a "compelling need" exists for disclosure of the requested information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A compelling need exists when, with respect to a request made by a person primarily engaged in disseminating information to the public, there is "an urgent need to inform the public about an actual or alleged Federal Government activity." 45 C.F.R. § 5.27(b)(2).

As a news organization, we are primarily engaged in disseminating information to the public. Over the last several years, wildfires have grown, and with them, so has pollution from particulate matter and ozone. Climate change is a significant factor in the understanding of five of the six criteria pollutants, and understanding how criteria pollution overall is expected is crucial to public understanding of the management of health risks. The information requested thus concerns "a matter of exigency to the American public" and "the consequences of delaying a response would compromise a significant recognized interest." *Bloomberg, L.P. v. United States Food & Drug Admin.*, 500 F. Supp. 2d 371, 377 (S.D.N.Y. 2007) (quoting *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001)).

Request for Explanation of Withholdings and Redactions

If this request is denied in whole or in part, please provide a reasonable description of any withheld materials and a justification for all such withholdings that includes reference to the specific FOIA exemptions authorizing withholding and specific reasons why such exemptions apply. 45 C.F.R. §

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5.31. An agency shall withhold information only if “the agency reasonably foresees that disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i). We therefore request that if the EPA determines that an exemption applies that it also provide specific reasons why disclosure would harm any interest protected by such exemption. An agency shall also “consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible” and “take reasonable steps necessary to segregate and release nonexempt information.” Id. 552(a)(8)(A)(ii). We therefore request that the EPA release all segregable portions of otherwise exempt material.

Thank you for your prompt attention to this request. If you have any questions or concerns about what we are seeking, please do not hesitate to contact us at the email address below. Pursuant to the applicable FOIA provision and departmental regulations, we expect a response regarding this request within the ten (10) working day time limit set by law. 45 C.F.R. § 5.27(c); 5 U.S.C. § 552(a)(6)(E)(ii)(I).

Sincerely,

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