

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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June 6, 2013

Mr. Arthur A. Elkins
Inspector General
U.S. Environmental Protection Agency
Office of Inspector General
1200 Pennsylvania Avenue N.W. (2410T)
Washington, DC 20460

Dear Mr. Elkins,

During a hearing before the House Energy and Commerce Committee last month, Environmental Protection Agency (EPA) Acting Administrator Bob Perciasepe stated he has asked your office to conduct an audit of the agency on the issue of Freedom of Information Act (FOIA) fee waivers.¹ Mr. Perciasepe's request comes in the wake of news stories alleging that EPA "often refuses to waive fees for Freedom of Information Act requests from conservative groups, while almost always waiving them for environmental groups."² These stories are based on the conclusions of a non-profit public policy group based on an analysis going back to 2012.³

Such allegations need to be taken seriously. FOIA is the law by which people can "access information from the federal government. It is often described as the law that keeps citizens in the know about their government."⁴ Requiring one category of groups to overcome a financial hurdle in the form of FOIA fees that are not assessed to other groups can effectively obstruct their ability to learn about actions being taken by the government. The allegations contradict the President's message regarding FOIA, which he issued in a memorandum on his first full day in office, stating, "All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government."⁵

¹ John McArdle and Jason Plautz, "EPA: Republicans say agency's FOIA decisions show 'anti-conservative attitude,'" *E&E (Greenwire)*, May 16, 2013, available at:

<http://www.eenews.net/greenwire/2013/05/16/stories/1059981313>; hereinafter E&E Article.

² Kent Hoover, "Conservative group accuses EPA of playing favorites on FOIA fees," *The Business Journals*, May 14, 2013, available at: <http://www.bizjournals.com/bizjournals/washingtonbureau/2013/05/14/conservative-group-accuses-epa-of.html>.

³ E&E Article, *supra*, note 1.

⁴ US DOJ FOIA.gov website, available at: <http://www.foia.gov>.

⁵ Memorandum from President Obama, "Freedom of Information Act," January 21, 2009, available at: http://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

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In another memorandum early in his first term, President Obama highlighted his commitment to transparency, stating, “[m]y Administration is committed to creating an unprecedented level of openness in Government,”⁶ and, “[t]ransparency promotes accountability and provides information for citizens about what their Government is doing.”⁷ In a subsequent memorandum on scientific integrity, the President further stated, “Political officials should not suppress or alter scientific or technological findings and conclusions. If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public.”⁸

As Members of this Committee, we agree unequivocally with the President’s comments, and take very seriously the role of transparency and openness as it relates to making research and data available. Scientific research is only as strong as its supporting data, and barring certain specific exceptions, access to data must not be restricted or shared selectively. The FOIA requests at the center of these allegations, particularly those based on information related to environmental research, development, data, or study, must follow the President’s principles to avoid the specter of bias or cronyism and promote trust in the decisions of the agency.

EPA’s actions are cause for concern in light of similar allegations at the Internal Revenue Service (IRS) that the agency is targeting conservative political groups for unfair and improper screening by putting up additional hurdles to applications for non-profit status. In a similar vein, the EPA allegedly erected financial hurdles for conservative groups in their FOIA applications for information. These discriminatory actions reflect an unfair and unequal application of the law, designed to clearly dissuade people and groups of a different political mindset than the Administration. Such actions can have a chilling effect on the populace, and raise questions about the integrity of critical agencies.

As Chairmen on a committee with jurisdiction over EPA, we are concerned by these allegations levied against the agency. We urge you to conduct a swift, yet thorough audit of the agency, and as part of your review, determine whether these are the actions of a few individuals, or if in fact, they reflect the philosophy of the leadership at EPA. We hope your audit of EPA’s FOIA policies will provide the necessary transparency on this matter.

Based on conversations between your staff and Committee staff, we understand that you have received the audit request from EPA, and expect to have additional information in a few weeks regarding your approach toward performing the audit. We would appreciate a briefing to

⁶ Memorandum from President Obama, “Transparency and Open Government,” January 21, 2009, available at: http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment.

⁷ Ibid.

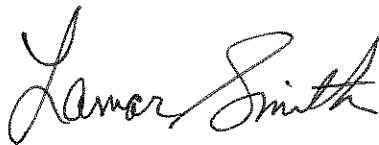
⁸ Memorandum from President Obama, “Scientific Integrity,” March 9, 2009, available at: http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09.

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the Committee at that time, and it would be helpful if your staff could provide us answers to the following questions:

- 1) Assuming you will conduct the audit, what questions do you expect to answer upon completion of your work?
- 2) Will the audit specifically identify and review the actions of EPA employees involved in the decision to assess FOIA fee waivers to conservative groups but not to environmental or liberal groups?
- 3) Will the audit include recommendations to the agency?
- 4) When do you expect to complete the audit?

If you have any questions, please feel free to have your staff contact Raj Bharwani at (202) 225-6371.



Rep. Lamar S. Smith
Chairman
Committee on Science, Space,
and Technology

Sincerely,



Rep. Paul Broun, M.D.
Chairman
Subcommittee on Oversight

cc:

Rep. Eddie Bernice Johnson
Ranking Member
Committee on Science, Space,
and Technology

Rep. Dan Maffei
Ranking Member
Subcommittee on Oversight