

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

EARTHRIGHTS INTERNATIONAL

1612 K Street NW, Suite 800
Washington, D.C. 20006,

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR

1849 C Street, N.W.
Washington, D.C. 20240

Defendant.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff EarthRights International (“EarthRights”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, against Defendant Department of the Interior (“Interior”), seeking records relating to the United States’ participation in the Extractive Industries Transparency Initiative (“EITI”) and the United States’ decision to withdraw from the Initiative.

2. EarthRights seeks declaratory relief that the Department of the Interior is in violation of the FOIA and injunctive relief requiring Interior to immediately process and release the requested records.

Jurisdiction And Venue

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 2201(a), and § 2202.

4. Venue properly lies with this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

Parties

5. Plaintiff EarthRights International is a non-profit organization under Internal Revenue Code § 501(c)(3), based in Washington, D.C. EarthRights is committed to protecting human rights and the environment in the United States and abroad. Through education, advocacy, and litigation, EarthRights challenges the actions of corporations, governments and financial institutions whose actions undermine human rights and contribute to irreversible environmental harms. EarthRights has a particular focus on extractive industry accountability and advancing both governmental and industry transparency in natural resource extraction to combat corruption and promote responsible natural resource governance. In furtherance of these goals, EarthRights files FOIA requests and disseminates the documents it receives through FOIA requests on its website (www.EarthRights.org), across its social media accounts, and uses such documents as the basis for litigation, reports, blog posts, newsletters, and other publications widely disseminated to the public.

6. Defendant Department of the Interior is an executive department and an agency within the meaning of the FOIA, 5 U.S.C. §§ 551, 552(f).

7. Interior is the executive agency responsible for managing the United States Government's natural resources and public lands. According to its website, "[T]he Department of the Interior plays a central role in how the United States stewards its public lands, increases

environmental protections, pursues environmental justice, and honors our nation-to-nation relationship with Tribes.”

8. Of particular relevance, Interior plays a vital role in the collection, distribution and verification of payments made by companies to the government for the extraction of resources on federal lands, Native American lands, and the Outer Continental Shelf. Interior was also the agency responsible for the creation of, and one of the central members of, the United States Extractive Industries Transparency Initiative (“USEITI”) Multi-Stakeholder Group Federal Advisory Committee, the multi-stakeholder group of government agencies, industry, and civil society responsible for implementing extractive industry transparency in the United States. In addition, Interior publishes and maintains the DOI Data Portal which hosts the USEITI Reports and provides access to annual revenue data reported by companies as well as government-reported revenue data, by company, commodity and revenue type.

Background

9. The Extractive Industries Transparency Initiative (“EITI”) is a global initiative, founded in 2003, as a way to strengthen public and corporate governance of, and transparency in, natural resource management, particularly with respect to revenues.

10. Countries that join the EITI commit to implement the EITI Standard, a common set of rules that governs disclosure requirements covering the entire extractive value chain – including how extraction rights are awarded; how revenues go to each government (and how the government, in turn, distributes them); and how revenues from extractive industry projects benefit the public. Countries publish reports on how the government manages the extractive sector, which includes a reconciliation of revenues paid by extractive companies and revenues received by the government.

11. In EITI implementing countries, this process is managed by a multi-stakeholder group, consisting of government, companies, and civil society organizations.

12. Countries must fulfill certain requirements before submitting an Application to be an EITI Candidate Country, including the creation of a multi-stakeholder group to oversee EITI implementation. Once the Application is submitted and a country is admitted as an EITI implementing country, the EITI board establishes deadlines for the validation process by which it will ensure the country has met all of the EITI requirements. Countries must complete the first Validation within two and a half years of becoming an EITI candidate and EITI Compliant countries are regularly re-evaluated thereafter.

13. In September 2011, under the Obama Administration, the United States committed to joining the EITI as part of the U.S. Open Government Partnership National Action Plan. In December 2013, the USEITI Multi-Stakeholder Group approved the U.S. Candidacy Application to be transmitted to the EITI Board. In March 2014, the EITI Board approved the application and the United States was officially admitted as a Candidate Country.

14. Interior was the lead federal government agency in the USEITI Multi-Stakeholder Group formed to prepare and file the United States' application, and to work towards implementing the EITI Standard in preparation for Validation.

15. In November of 2017, however, the United States announced it would withdraw as an implementing country from the EITI. The decision, which marked a significant reversal in U.S. policy, prompted a substantial amount of controversy and confusion. That announcement was made by Gregory J. Gould, Director of the Office of Natural Resources and Revenue of the Department of the Interior.

16. In particular, the announcement raised questions and concerns over the stated justification given for doing so in light of efforts by certain industry actors that had actively sought to avoid disclosure of their payments and to undermine implementation. There were also concerns raised by civil society and the media about potential serious conflict of interests and ethics issues with key decision makers. This included whether then-Secretary of State Rex Tillerson, formerly the CEO of ExxonMobil, had been involved in the decision. His involvement would have created a serious conflict of interest given his role at ExxonMobil in personally lobbying against extractive industry transparency laws and regulations in the United States that were critical to EITI compliance.

17. The records requested would shed light on, and contribute to the public understanding of, the decision to leave the EITI and, more broadly, the United States' actions (or lack thereof) towards promoting transparency in the extractive industry sector.

18. On May 5, 2020, EarthRights sent a FOIA request to Interior using its on-line portal. The Request is attached as Exhibit A.

19. The request sought: "All communications and other records between January 2, 2017 and December 31, 2017, discussing or otherwise concerning the United States' participation in and/or implementation of the Extractive Industries Transparency Initiative ("EITI" or "USEITI"), including specifically the U.S. decision to withdraw as an EITI implementing country."

20. The request noted that "the decision of the United States to withdraw as an EITI implementing country was publicly announced in a November 2, 2017 letter from Gregory J. Gould, Director of the Office of Natural Resources and Revenue of the Department of the

Interior, to Fredrik Reinfeldt, Chair of the EITI Board. (Available at https://www.doi.gov/sites/doi.gov/_les/uploads/eiti_withdraw.pdf).

21. In addition, the request asked, “[t]o the extent not already encompassed by Request #1, all documents supporting the statement in the November 2, 2017 letter from Gregory Gould that ‘U.S. laws prevent us from meeting specific provisions of the EITI Standard,’ and any other communications or records discussing this statement. (Available at: https://www.doi.gov/sites/doi.gov/_les/uploads/eiti_withdraw.pdf.)” The request specified that the response should include any responsive documents from November 9, 2016 to December 31, 2017. It further explained that, “[f]or reference, this may include, but is not limited to, any records mentioning, citing, or discussing U.S. federal laws and regulations concerning disclosure of corporate tax information in connection with any requirement that extractive (oil, gas, or mining) companies’ federal tax payments . . .”. The FOIA Request also sought a waiver of fees associated with the processing of the request.

22. In a letter dated June 3, 2020, Interior acknowledged receiving the Request and assigned it Number 2020-00534. (A copy of Interior’s letter is appended hereto as Exhibit B). The letter also granted EarthRights a fee waiver.

23. By e-mail dated October 29, 2020, Interior sent EarthRights an e-mail in which it stated that EarthRights’ request was very similar to a prior request, Number 2018-00350, for which Interior “has gathered all of the responsive data.” See Exhibit C. However, it stated that request was withdrawn. That withdrawn request was attached to the email and is appended here as Exhibit D.

24. The October 29, 2020 e-mail asked EarthRights whether that data could be used to respond to its May 5, 2020 request. EarthRights agreed to that request by e-mail the same day. See Exhibit E.

25. Nevertheless, over two years later, Interior has not provided EarthRights the data which it claimed already to have gathered.

Statutory Framework

26. The FOIA requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

27. A presumption of disclosure applies to all decisions related to the FOIA and agencies should only withhold information if the disclosure is prohibited by law or if they reasonably foresee that disclosure would harm an interest protected by an exemption. 5 U.S.C. § 552(a)(8).

28. The FOIA provides for nine exemptions, none of which are applicable to this request. 5 U.S.C. § 552(b).

29. An agency must respond to a party making a FOIA request within twenty working days, notifying the party of the agency's determination whether to fulfill the request, what information it will provide or withhold, reasons for withholding any information, and notification of the requester's right to appeal the agency's determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

30. In "unusual circumstances," these time limits may be extended for no more than ten working days by written notice to the party making such request. 5 U.S.C. § 552(a)(6)(B).

EARHRIGHTS' CLAIM FOR RELIEF

COUNT I Interior's Wrongful Withholding of Records

Responsive to Its FOIA Request

31. EarthRights re-alleges and incorporates by reference all preceding paragraphs.

32. In its May 5, 2020 request, EarthRights properly asked for records within the possession, custody, and control of Interior, and for a waiver of fees associated with the processing of its request.

33. Interior has failed to conduct an adequate and timely search in response to EarthRights' request.

34. Interior is wrongfully withholding records responsive to EarthRights' request.

35. By failing to timely release all requested records in full to EarthRights, Interior is in violation of the FOIA.

36. EarthRights has constructively exhausted its administrative remedies.

37. EarthRights is therefore entitled to declaratory and injunctive relief requiring immediate processing and disclosure of the requested records.

Requested Relief

WHEREFORE, EarthRights respectfully requests that judgment be entered in its favor against Interior, and that this Court:

(1) Declare that EarthRights is entitled to prompt processing and disclosure of the requested records;

(2) Declare that EarthRights is entitled to a waiver of fees associated with the processing of its request;

(3) Enjoin Interior from withholding records responsive to EarthRights' FOIA request;

- (4) Order Interior to fully and promptly process EarthRights' May 5, 2020 FOIA request and produce all non-exempt documents immediately to EarthRights;
- (5) Provide for expeditious proceedings in this action;
- (6) Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
- (7) Award EarthRights its costs and reasonable attorneys' fees in this action; and
- (8) Grant all such other relief as the Court may deem just and proper.

DATED: May 27, 2022

Respectfully submitted,

/s/ Jeffrey S. Gutman
Jeffrey S. Gutman, Esq.
(D.C. Bar No. 416954)
jgutman@law.gwu.edu
The George Washington University Law School
Jacob Burns Community Legal Clinics
2000 G Street NW
Washington, DC 20052
Tel.: (202) 994-5797
Fax.: (202) 994-4693

Marco B. Simons (D.C. Bar No. 492713)
Michelle Harrison (D.C. Bar No. 1026592)
EARTHRIGHTS INTERNATIONAL
1612 K St. NW, Suite 800
Washington, D.C. 20006
Tel: (202) 466-5188
Fax: (202) 466-5189
michelle@earthrights.org

Attorneys for Plaintiff EarthRights International



U.S. Department of the Interior

Your Form Has Been Submitted

Please print or save a copy of this confirmation page for your records.

Your Submission Details

Your Name

Michelle Harrison

Mailing Address

1612 K St. NW Suite 800

City

WASHINGTON

State or Country

District of Columbia

Zip or Postal Code

20006

Address Type

Business

Daytime Phone Number

7038010051

Fax Number**E-mail Address**

michelle@earthrights.org

Confirm E-mail Address

michelle@earthrights.org

Your Organization

EarthRights International

Are you filing the request on behalf of another party?

No

breakline**If so, who are you filing the request on behalf of?****Contact Information Certification****Request Information****Bureau/Office**

Office of the Secretary (OS)

Relevant park, refuge, site or other location**Request Message****Request Description**

1. All communications and other records between January 2, 2017 and December 31, 2017, discussing or otherwise concerning the United States' participation in and/or implementation of the Extractive Industries Transparency Initiative ("EITI" or "USEITI"), including specifically the U.S. decision to withdraw as an EITI implementing country. For reference, please note that the decision of the United States to withdraw as an EITI implementing country was publicly announced in a November 2, 2017 letter from Gregory J. Gould, Director of the Office of Natural Resources and Revenue of the Department of the Interior, to Fredrik Reinfeldt, Chair of the EITI Board. (Available at https://www.doi.gov/sites/doi.gov/files/uploads/eiti_withdraw.pdf). 2. To the extent not already encompassed by Request #1, all documents supporting the statement in the November 2, 2017 letter from Gregory Gould that "U.S. laws prevent us from meeting specific provisions of the EITI Standard," and any other communications or records discussing this statement. (Available at: https://www.doi.gov/sites/doi.gov/files/uploads/eiti_withdraw.pdf). For this request please include any responsive documents from November 9, 2016 to

December 31, 2017. For reference, this may include, but is not limited to, any records mentioning, citing, or discussing U.S. federal laws and regulations concerning disclosure of corporate tax information in connection with any requirement that extractive (oil, gas, or mining) companies' federal tax payments be disclosed. For the above requests, please search for responsive records regardless of format, medium or physical characteristics. This request seeks records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data and graphical material. This request includes, without limitation, all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes or minutes of any meetings, telephone conversations, or discussions. This request also includes any attachments to emails and other records and any recipients that were bcc'ed or cc'ed on any responsive emails. As the FOIA requires, please release all reasonably segregable nonexempt portions of documents. If your position is that any portion of the requested records is exempt from disclosure, we request that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Requester's Communication Preferences

Electronic communication via email

Document Disclosure Preferences

Electronic copies via email

Expedited Processing

Select the applicable reason why you are requesting expedited processing

Justification spacing

Justification for Expedited Processing

Expedited Processing Certification

Submission Date / Time May 5, 2020, 4:09 pm

Submission Page FOIA Request Form (https://www.doi.gov/node/32906)

Submission ID 606976

[Go back to the form](#)



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U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240. feedback@ios.doi.gov



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

IN REPLY REFER TO:
7202 4-OS-2020-00534

June 3, 2020

Via email: michelle@earthrights.org

Michelle Harrison
EarthRights International
1612 K St. NW Suite 800
Washington, DC 20006

Dear Ms. Harrison

The Office of the Secretary FOIA office received your Freedom of Information Act (FOIA) request, dated May 5, 2020, on May 5, 2020 and assigned it control number **OS-2020-00534**. Please cite this number in any future communications with our office regarding your request.

1. All communications and other records between January 2, 2017 and December 31, 2017, discussing or otherwise concerning the United States' participation in and/or implementation of the Extractive Industries Transparency Initiative ("EITI" or "USEITI"), including specifically the U.S. decision to withdraw as an EITI implementing country.

For reference, please note that the decision of the United States to withdraw as an EITI implementing country was publicly announced in a November 2, 2017 letter from Gregory J. Gould, Director of the Office of Natural Resources and Revenue of the Department of the Interior, to Fredrik Reinfeldt, Chair of the EITI Board. (Available at https://www.doi.gov/sites/doi.gov/files/uploads/eiti_withdraw.pdf).

2. To the extent not already encompassed by Request #1, all documents supporting the statement in the November 2, 2017 letter from Gregory Gould that "U.S. laws prevent us from meeting specific provisions of the EITI Standard," and any other communications or records discussing this statement. (Available at: https://www.doi.gov/sites/doi.gov/files/uploads/eiti_withdraw.pdf). For this request please include any responsive documents from November 9, 2016 to December 31, 2017.

For reference, this may include, but is not limited to, any records mentioning, citing, or discussing U.S. federal laws and regulations concerning disclosure of corporate tax information in connection with any requirement that extractive (oil, gas, or mining) companies' federal tax payments be disclosed.

Michelle Harrison

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Fee Category

We have classified you as an educational or noncommercial scientific institution. As such, we may charge you for some of our duplication costs, but we will not charge you for our search or review costs; you also are entitled to up to 100 pages of photocopies (or an equivalent volume) for free. *See 43 C.F.R. § 2.39.* If, after taking into consideration your fee category entitlements, our processing costs are less than \$50.00, we will not bill you because the cost of collection would be greater than the fee collected. *See 43 C.F.R. § 2.37(g)*

Fee Waiver

You have asked us to waive the fees for processing your request. Our FOIA regulations require that bureaus will waive, or partially waive, fees if disclosure of all or parts of the information is in the public interest because it is likely to contribute significantly to public understanding of government operations or activities and is not primarily in your commercial interest. Your request meets these criteria and therefore, the bureau has decided to grant you a fee waiver. *See 43 C.F.R. § 2.45(a).*

Processing Track

We use Multitrack Processing to process FOIA requests. The Simple track is for requests that would generally take one to five workdays to process. The Normal track is for requests that would generally take six to twenty workdays to process. The Complex track is for requests that would generally take twenty-one to sixty workdays to process. The Extraordinary track is for requests that would generally take more than sixty workdays to process. The Expedited track is for requests that have been granted expedited processing, which are processed as soon as practicable. Within each track, requests are usually processed on a first-in, first-out basis.

Your request falls into the Complex processing track. *See 43 C.F.R. §§ 2.14, 15*

You may narrow the scope of your request to obtain quicker processing in your currently-assigned track or move the request into a different track (which may have the effect of reducing the cost of processing your request and having it processed more quickly). If you have any questions about this, please contact us.

Format of Records

You have asked for copies of agency records. According to our regulations, you may choose the format of disclosure for such records. Unless you specify otherwise, the Office of the Secretary will provide copies of responsive records electronically via email or CD-ROM as scanned PDF images when the responsive records exceed 50 pages.

Michelle Harrison

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If you have any questions regarding the status of your request, or any of the issues discussed in this letter, you may contact our office by phone at (202) 513-0765, by fax at (202) 219-2374, by e-mail at os_foia@ios.doi.gov or by mail at U.S. Department of the Interior, 1849 C St, N.W., MS-7328 MIB, Washington, D.C. 20240. Contact information for the Department's FOIA Public Liaison, who you may also seek dispute resolution services from, is available at <https://www.doi.gov/foia/foiacenters>.

Sincerely,

**CYNTHIA
SWEENEY**

Cynthia Sweeney
Office of the Secretary
FOIA Office

Digitally signed by CYNTHIA
SWEENEY
Date: 2020.06.03 12:48:07
-04'00'



Deirdre Dlugoleski <deirdre@earthrights.org>

Fwd: FOIA Request OS-2020-00534 – Acknowledgment Letter

Michelle Harrison <michelle@earthrights.org>
 To: Deirdre Dlugoleski <deirdre@earthrights.org>

Thu, Apr 14, 2022 at 1:43 PM

----- Forwarded message -----

From: **Fay, Tracey L** <Tracey.Fay@onrr.gov>
 Date: Thu, Oct 29, 2020 at 3:43 PM
 Subject: FW: [EXTERNAL] Re: FOIA Request OS-2020-00534 – Acknowledgment Letter
 To: Michelle Harrison <michelle@earthrights.org>

Ms. Harrison:

This email is in response to your email, dated September 23, 2020, and below. I apologize for not getting back to you sooner. The Office of Natural Resources Revenue FOIA office received your Freedom of Information Act (FOIA) request, dated May 5, 2020, and assigned it control number 2020-00534. Please cite this number in any future communications with our office regarding your request. We are currently working on your request, however, you should be aware that ONRR FOIA office has a very limited FOIA staff and we have a current backlog of requests.

Additionally, I wanted to discuss the scope of your request as ONRR had a previous request that was very similar, it is attached to this email. For request 2018-00350, we had gathered all the responsive data; unfortunately, the requester in that case withdrew the request prior to the review being completed. Please review the earlier FOIA request and email your concurrence that we can use the responsive data for it, for your request as well. By using this information, your request can be moved forward to the review stage and it saves time by not having to redo a search request to the program offices.

For your information, the Department of Interior uses *Multitrack Processing* to process FOIA requests. The Simple track is for requests that would generally take one to five workdays to process. The Normal track is for requests that would generally take six to twenty workdays to process. The Complex track is for requests that would generally take twenty-one to sixty workdays to process. The Extraordinary track is for requests that would generally take more than sixty workdays to process. The Expedited track is for requests that have been granted expedited processing, which are processed as soon as practicable. Within each track, requests are usually processed on a first-in, first-out basis.

Your request falls into the complex processing track. See [43 C.F.R. §§ 2.14, .15](#) There are currently 20 FOIA requests in front of this request. I will work your request as soon as possible.

As we have been unable to make a determination on your request. You may narrow the scope of your request to obtain quicker processing in your currently-assigned track or move the request into a different track (which may have the effect of reducing the cost of processing your request and having it processed more quickly). Some suggested ways to narrow are to accept the earlier FOIA response documents as responsive to your request plus contact me to discuss where it could be narrowed further as there are over a thousand pages responsive to the previous request and your request.

You also may agree to an alternative time period for processing by communicating with us, our FOIA Requester Center, or the FOIA Public Liaison. Contact information for the Department's

Exhibit C

FOIA Requester Centers and FOIA Public Liaison is available at <https://www.doi.gov/foia/foiacenters>. You may also seek dispute resolution services from the Office of Government Information Services (OGIS). If you choose to contact OGIS, you may do so in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

You may also file an appeal with the Department's FOIA/Privacy Act Appeals Officer regarding this delay. If you choose to appeal this delay, you may do so anytime between now and the date we make our determination on the FOIA request. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must also include with your appeal copies of all correspondence between you and Office of the Secretary concerning your FOIA request, including your original FOIA request and this response. Failure to include with your appeal all correspondence between you and Office of the Secretary will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240

Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is

given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

We regret the delay and appreciate your consideration. For more information on FOIA Administrative Appeals, you may review the Department's FOIA regulations at [43 C.F.R. Part 2, Subpart H](#). If you have any questions, you may contact us by phone at 202- 513-0765, by fax at 202-219-2374, by email at os_foia@ios.doi.gov , or by mail at U.S. Department of the Interior, [1849 C Street, NW](#), MS-7328, Washington, D.C. 20240.

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

Contact information for the Department's FOIA Public Liaison, who you may also seek dispute resolution services from, is available at <https://www.doi.gov/foia/foiacenters>.

Thank you.

Tracey Fay
303-231-3430

From: Michelle Harrison <michelle@earthrights.org>
Sent: Wednesday, September 23, 2020 10:51 AM
To: OS, OS FOIA <osfoia@ios.doi.gov>
Subject: [EXTERNAL] Re: FOIA Request OS-2020-00534 – Acknowledgment Letter

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hello,

I am writing to follow up on FOIA request OS-2020-00534. Can you please advise the estimated date of completion? It has been nearly 4 months since this request was filed.

Thank you very much,

Michelle

On Wed, Jun 3, 2020 at 1:12 PM OS, OS FOIA <osfoia@ios.doi.gov> wrote:

Dear Ms. Harrison,

Please find attached an acknowledgment letter for FOIA Request OS-2020-00534.

Thank you,

Emily Karp

--

Department of the Interior

Office of the Secretary, FOIA Office

[1849 C Street, NW](#), MS-7328

Washington, D.C. 20240

os_foia@ios.doi.gov

(202) 513-0765 - phone

(202) 219-2374 - fax

--

Michelle Harrison

Staff Attorney

202-466-5188 x 110 (USA)


www.earthrights.org

Admitted to practice in Virginia and the District of Columbia.

[Facebook](#) // [Twitter](#) // [Instagram](#)



[Quoted text hidden]

 **18-00350qa.pdf**
202K



OS, OS FOIA <osfoia@ios.doi.gov>

FOIA REQUEST

1 message

FOIA Requests <foia@democracyforward.org>
To: os_foia@ios.doi.gov

Thu, Nov 30, 2017 at 1:16 PM

Dear FOIA Officer,

Please see below and attached a FOIA request for records related to Department of the Interior's letter announcing the Trump administration's intent to withdraw from the Extractive Industries Transparency Initiative. Please note the attached PDF of the request includes hyperlinks for additional context.

If you have any questions, please respond to this email.

Thank You!



November 28, 2017

VIA ELECTRONIC MAIL

Clarice Julka
FOIA Officer
Department of the Interior
MS-7328, MIB
1849 C Street, NW
Washington, DC 20240
os_foia@ios.doi.gov

Re: Freedom of Information Act Records Request

Dear FOIA Officer,

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and the Department of the Interior FOIA regulations at 43 C.F.R. Part 2, Democracy Forward Foundation makes the following request for records.

Exhibit D

Background

On November 2, 2017, the Department of the Interior issued a letter announcing the Trump administration's intent to withdraw from the Extractive Industries Transparency Initiative. This global anti-corruption effort "compels oil, gas and mining companies to disclose the payments they give governments worldwide." The Trump administration claims that domestic law prevents the US from fully complying with the EITI, but says it will continue to support "country-level EITI implementation."

Records Requested

In an effort to better understand, and explain to the public, the decision-making process behind the Extractive Industries Transparency Initiative decision, Democracy Forward Foundation requests that Interior produce the following within twenty (20) business days:

1. All correspondence and communications, including attachments, received or sent by Interior officials regarding the decision to withdrawal from the Extractive Industries Transparency Initiative. Please include all communications that mention "Extractive Industries Transparency Initiative" or "EITI." Searches should include any communications involving the White House, State Department, as well as from individuals outside of government.
2. All records memorializing any meetings involving the decision to withdrawal from the Extractive Industries Transparency Initiative. Records include calendars with schedules, phone logs, meeting invitations, and similar records.
3. All records of legal analysis, including any memoranda or documents, written or received by Interiors officials that explain how "domestic implementation of EITI does not fully account for the US. legal framework" or "the fact that the U. S. laws prevent us from meeting specific provisions of the EITI."
4. All correspondence, including attachments, communications, memoranda, or similar records documenting proposals, plans, or decisions, to continue complying with the spirit of the EITI after withdrawal from the agreement.

Scope of Search

The time period for this portion of the request is January 20, 2017 until the time the search is conducted.

Please limit the search to the following Interior offices: the office of Secretary, the Office of Natural Resources Revenue, and the USEITI Secretariat.

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, attachments text messages, instant messages, slack messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. §552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See* 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 43 CFR § 2.46, Democracy Forward Foundation requests a waiver of all fees associated with processing records for this request. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of these operations by the public in a significant way. Moreover, the request is for non-commercial purposes.

Pursuant to 43 C.F.R. § 2.45(a)(1), disclosure of the requested records is “likely to contribute significantly to public understanding of government operations or activities.”

The requested records, which will illuminate the reasons for the Administration’s decision to withdraw from the EITI, clearly “concern” and have a “logical connection” to operations or activities of the Federal Government. *Id.* §§ 2.48(a)(1), (a)(2)(i). Because these records will shed light on the reasons for this change in a manner that has not already been made public, they also will be “meaningfully informative” (*id.* § 2.48(a)(2)(ii)) and will contribute to public understanding in a “significant” way (*id.* § 2.48(a)(3)). As described below, Democracy Forward Foundation intends to use its website and social media accounts to ensure that the records disclosed in response to this request will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” *Id.* §§ 2.48(a)(2)(iii)-(v). In sum, the requested records will shed light on the government’s justification for withdrawing from this important international agreement and educate the public on its intended compliance as a supporting nation.

This request is primarily for non-commercial purposes. *Id.* § 2.45(a)(2). Democracy Forward Foundation is a nonprofit organization organized under Internal Revenue Code § 501(c)(3). A core mission of Democracy Forward Foundation is to educate the public about improper government activity. Democracy Forward Foundation intends to use the materials gathered to educate the public through its website, press releases, and social media outlets.

Accordingly, Democracy Forward Foundation qualifies for a fee waiver.

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20 day period, please contact Karianne Jones as soon as possible at foia@democracyforward.org or 202-448-9090.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Karianne Jones

Karianne Jones*

Counsel

Democracy Forward Foundation

*Admitted in the State of Minnesota; practicing under the supervision of members of the D.C. bar while D.C. bar application is pending.



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Michelle Harrison <michelle@earthrights.org>

FOIA Request OS-2020-00534 – Acknowledgment Letter

Michelle Harrison <michelle@earthrights.org>
To: "Fay, Tracey L" <Tracey.Fay@onrr.gov>

Thu, Oct 29, 2020 at 4:07 PM

Hi Tracey,

Thank you for the email. I am happy to have you use the responsive data from the prior request to move things along more quickly. There is no reason to recreate the work when the requests are so similar. Thank you very much, I look forward to receiving the responsive documents.

Should you have any questions, please feel free to call me at 7038010051 (my cell, as we are still working remotely).

Hope you and your family are staying safe and healthy,

Michelle

On Thu, Oct 29, 2020 at 3:43 PM Fay, Tracey L <Tracey.Fay@onrr.gov> wrote:

Ms. Harrison:

This email is in response to your email, dated September 23, 2020, and below. I apologize for not getting back to you sooner. The Office of Natural Resources Revenue FOIA office received your Freedom of Information Act (FOIA) request, dated May 5, 2020, and assigned it control number 2020-00534. Please cite this number in any future communications with our office regarding your request. We are currently working on your request, however, you should be aware that ONRR FOIA office has a very limited FOIA staff and we have a current backlog of requests.

Additionally, I wanted to discuss the scope of your request as ONRR had a previous request that was very similar, it is attached to this email. For request 2018-00350, we had gathered all the responsive data; unfortunately, the requester in that case withdrew the request prior to the review being completed. Please review the earlier FOIA request and email your concurrence that we can use the responsive data for it, for your request as well. By using this information, your request can be moved forward to the review stage and it saves time by not having to redo a search request to the program offices.

For your information, the Department of Interior uses *Multitrack Processing* to process FOIA requests. The Simple track is for requests that would generally take one to five workdays to process. The Normal track is for requests that would generally take six to twenty workdays to process. The Complex track is for requests that would generally take twenty-one to sixty workdays to process. The Extraordinary track is for requests that would generally take more than sixty workdays to process. The Expedited track is for requests that have been granted expedited processing, which are processed as soon as practicable. Within each track, requests are usually processed on a first-in, first-out basis.

Your request falls into the complex processing track. See *43 C.F.R. §§ 2.14, .15* There are currently 20 FOIA requests in front of this request. I will work your request as soon as possible.

As we have been unable to make a determination on your request. You may narrow the scope of your request to obtain quicker processing in your currently-assigned track or move the request into a different track (which may have the effect of reducing the cost of processing your request and having it processed more quickly). Some suggested ways to narrow are to accept the earlier FOIA response documents as responsive to your request plus contact me to discuss where it could be narrowed further as there are over a thousand pages responsive to the previous request and your request.

Exhibit E

You also may agree to an alternative time period for processing by communicating with us, our FOIA Requester Center, or the FOIA Public Liaison. Contact information for the Department's FOIA Requester Centers and FOIA Public Liaison is available at <https://www.doi.gov/foia/foiacenters>. You may also seek dispute resolution services from the Office of Government Information Services (OGIS). If you choose to contact OGIS, you may do so in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

You may also file an appeal with the Department's FOIA/Privacy Act Appeals Officer regarding this delay. If you choose to appeal this delay, you may do so anytime between now and the date we make our determination on the FOIA request. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must also include with your appeal copies of all correspondence between you and Office of the Secretary concerning your FOIA request, including your original FOIA request and this response. Failure to include with your appeal all correspondence between you and Office of the Secretary will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240

Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

We regret the delay and appreciate your consideration. For more information on FOIA Administrative Appeals, you may review the Department's FOIA regulations at [43 C.F.R. Part 2, Subpart H](#). If you have any questions, you may contact us by phone at 202- 513-0765, by fax at 202-219-2374, by email at os_foia@ios.doi.gov , or by mail at U.S. Department of the Interior, 1849 C Street, NW, MS-7328, Washington, D.C. 20240.

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

Contact information for the Department's FOIA Public Liaison, who you may also seek dispute resolution services from, is available at <https://www.doi.gov/foia/foicenters>.

Thank you.

Tracey Fay

303-231-3430

From: Michelle Harrison <michelle@earthrights.org>
Sent: Wednesday, September 23, 2020 10:51 AM
To: OS, OS FOIA <osfoia@ios.doi.gov>
Subject: [EXTERNAL] Re: FOIA Request OS-2020-00534 – Acknowledgment Letter

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hello,

I am writing to follow up on FOIA request OS-2020-00534. Can you please advise the estimated date of completion? It has been nearly 4 months since this request was filed.

Thank you very much,

Michelle

On Wed, Jun 3, 2020 at 1:12 PM OS, OS FOIA <osfoia@ios.doi.gov> wrote:

Dear Ms. Harrison,

Please find attached an acknowledgment letter for FOIA Request OS-2020-00534.

Thank you,

Emily Karp

--

Department of the Interior

Office of the Secretary, FOIA Office

1849 C Street, NW, MS-7328

Washington, D.C. 20240

os_foia@ios.doi.gov

(202) 513-0765 - phone

(202) 219-2374 - fax

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Michelle Harrison

Staff Attorney

202-466-5188 x 110 (USA)

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