

VIA E-MAIL – Delivery and Read Receipt Requested

February 18, 2021

U.S. Department of Energy
Richland Operations Office FOIA Office
ATTN: Dorothy Riehle
P. O. Box 550
Richland, WA 99352
Email: dorothy.riehle@rl.doe.gov

RE: Freedom of Information Act Request – T Plant Occurrence Reports

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552) ("FOIA"), Hanford Challenge respectfully requests copies of any and all records related to T Plant Occurrence Reports. More specifically, Hanford Challenge requests the T Plant Occurrence Reports from January 1, 2018 to the present.

According to the Hanford.gov website, the "T Plant is providing safe and compliant temporary storage for highly radioactive sludge received from the 105 K West Reactor fuel storage basin, near the Columbia River. Removing that sludge from the basin and placing it into specially designed containers for storage approximately 12 miles away at T Plant significantly reduces risk to the Columbia River. Prior to its current mission of sludge storage, T Plant was used to treat, verify, and sample gases inside waste drums, and repackage waste generated at the Hanford Site to ensure waste packages complied with state and federal transportation, storage, and disposal regulations."

The term "records" as used in this request is intended to cover documents and data whether maintained in paper, digital or electronic formats and stored on media such as hard drives, smart phones, tape drives, or other such formats.

Hanford Challenge specifically requests that you undertake a search of all offices that may be in possession or control of these records at any location where responsive records might reasonably be found.

If any records covered by this request have been destroyed and/or removed, or are destroyed and/or removed after receipt of this request, please provide all surrounding records, including but not limited to a list of all records which have been destroyed and/or removed, a description of the actions taken, relevant dates, and individual, office and/or agency-wide policies, and/or justifications for the action(s).

Fee Waiver Request

Fees for FOIA requests are waived when a requester satisfies the burden of showing that disclosure of the information is (1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (2) is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); See also, Judicial Watch, Inc. v. Rossotti, 326 F.3d 1309 (D.C.C. 2003). "The Department of Energy will furnish documents without charge or at reduced charges if 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 disclosure is not primarily in the commercial interest of the requester.” 10 CFR § 104.9(a)(8).

“This fee waiver standard thus sets forth two basic requirements, both of which must be satisfied before fees will be waived or reduced. First it must be established that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. Second, it must be established that disclosure of the information is not primarily in the commercial interest of the requester. When these requirements are satisfied, based upon information supplied by a requester or otherwise made known to the DOE, the waiver or reduction of a FOIA fee will be granted.” 10 CFR § 1004.9(a)(8).

Pursuant to 10 CFR § 1009.4(a)(8), in determining when fees should be waived or reduced the appropriate FOIA Officer should address the following two criteria:

(i) 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.” Factors to be considered in applying this criteria include but are not limited to:

(A) The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government”;

(B) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities;

(C) The contribution to an understanding by the general public of the subject likely to result from disclosure; and

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

(ii) If Disclosure of the Information “is Not Primarily in the Commercial Interest of the Requester.” Factors to be considered in applying this criteria include but are not limited to:

(A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(B) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.” 10 CFR § 1009.4(a)(8).

“Congress intended independent researchers, journalists, and *public interest watchdog groups* to have inexpensive access to government records in order to provide the type of public disclosure believed essential to our society . . . Congress ensured that when such requesters demonstrated a *minimal showing* of their legitimate intention to use the requested information in a way that contributes to public understanding of the operations of government agencies, no fee attached to their request.” Inst. for Wildlife Prot. v. United States Fish & Wildlife Serv., (290 F. Supp. 2d 1226, 1232 (D. Or. 2003) (emphasis added). “Congress amended FOIA to ensure that it is ‘*liberally construed in favor of waivers for noncommercial requesters.*’” Judicial Watch, Inc., at 1312 (quoting McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27,190 (1986) (Sen. Leahy)) (emphasis added). The fee waiver provision of FOIA “should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver. W.

Watersheds Project v. Brown, 318 F. Supp. 2d 1036, 1039 (D. Id. 2004) (citing McClellan Ecological Seepage Situation, at 1284).

First Fee Waiver Requirement (Public Understanding):

Factor A: The requested records concern the operations and activities of the federal government.

1. This criteria is clearly met. We seek records in the possession and control of the Department of Energy (DOE) relating to the Department's Occurrence Reports at T Plant at the Department's Hanford Site. The Department of Energy, the owner and manager of the Hanford Site, has conducted occurrence reports all over the site—including at T Plant—making this function an identifiable operation of the government.
2. The act of a federal government agency (here, the U.S. DOE) collecting and assembling events that rise to the level of an occurrence report is clearly an operation/activity of the federal government.

Factor B: The disclosure of the requested records is likely to contribute to a public understanding of government operations and activities of the federal government.

1. The records requested in this FOIA request are not currently in the public domain to the best of our knowledge or otherwise common knowledge among the general public.
2. The records requested will likely aid in explaining what the federal government deems important enough to be included in an occurrence report.
3. Unlike other federal government agency actions (like rulemaking, investigations, etc), where there is a record for decision-making, there is no such readily available records or documentation for T Plant occurrence reports. The public understanding of this government operation/activity will be significantly enhanced by releasing the specific documents and communications requested by having access to and seeing more of the record and accompanying documents of how their government arrived at their decisions.
4. There are no records, articles, published works, etc that cover the records requested in this request. Nor is the requested information common knowledge among the general public.
5. Hanford Challenge intends to disseminate these records, and an analysis of the records, to media outlets, congresspersons, post it on Hanford Challenge's website, etc to get the information to the public.

Factor C: The disclosure of the requested records is likely to contribute to the general public understanding of government operations and activities.

1. Hanford Challenge expertise in the subject area:
 - a. The Hanford Challenge staff has many years of experience directly related to Hanford oversight and has unique expertise regarding the environmental, safety, and health issues associated with nuclear sites. Hanford Challenge, an independent non-profit and non-governmental agency, has been addressing cleanup and storage of nuclear and chemical waste at the Hanford Nuclear Site for almost a decade. Tom Carpenter, the Executive Director of Hanford Challenge, has been working on Hanford cleanup and waste storage issues for over 25 years.
 - b. Hanford Challenge consistently obtains information about Hanford, the cleanup process, the storage of nuclear and chemical waste, etc, and consistently uses its capacity to

- read, dissect, and share the information in an easily understandable format for the public.
- c. Hanford Challenge has a seat on the Hanford Advisory Board, which advises the U.S. Department of Energy, The EPA, and the State of Washington on cleanup issues related to the Hanford Nuclear Site.
 - d. Hanford Challenge staff also accompany Hanford workers to Congress for congressional hearings and to testify before Congress.
 - e. Hanford Challenge is consistently requested to comment or be interviewed for news articles, news shows, radio talk shows, and reports related to Hanford. This includes BBC, 60 Minutes, Newsweek, CBS This Evening, National Geographic, The Rachel Maddow Show, Washington Post, New York Times, Seattle Times, LA Times, King5 TV, Northwest Public Radio, King5 news, The Tri-City Herald, etc.
 - f. There is no other non-governmental organization in existence that has as much collective experience or expertise on Hanford cleanup issues as Hanford Challenge.
 - g. Hanford Challenge also publishes reports on information it obtains, including from FOIA requests.
2. Ability and intention to effectively convey information to the public.
- a. Hanford Challenge has already shared information obtained in the past and will share the specifically requested information with the broad public and specific media outlets:
 - i. Hanford Challenge will share the information with King5 Television in Seattle, Washington. Hanford Challenge regularly works with King5 TV, National Public Radio, LA Times, Washington Post, Tri-City Herald, Associated Press, Weapons Complex Monitor, and CBS Nightly News. Recently, King5 has been particularly effective in conveying information to the public. King5 TV has been doing a series of stories called "Hanford's Dirty Secrets." King5 has won a Peabody for their work on this series.
 - ii. As stated above, Hanford Challenge is often requested to appear or be interviewed for specific Hanford stories and does so on a regular basis.
 - iii. Hanford Challenge may share the requested information with the Hanford Advisory Board if needed or requested.
 - b. Hanford Challenge will also likely disseminate the requested information via our website (www.hanfordchallenge.org; which is viewed by tens of thousands of visitors annually, includes documents, resources, and news on Hanford), quarterly newsletter, social media (Facebook (1,693 followers) and Twitter (1452 followers)), report(s) (if appropriate), elected representatives, and public events.
3. It is likely that a reasonably broad audience would be interested in the occurrence reports because it involves events significant enough to rise to the level of being included in the occurrence reports.

Factor D: The disclosure of the requested records is likely to contribute 'significantly' to the public understanding of government operations and activities.

1. The release of the requested records are in the public interest and are likely to contribute significantly to the public understanding of the operations of the government because these types of records reveal the activities at the Hanford Site, including DOE collection of information and events that are important enough to be included in the occurrence reports.

2. The requested records will contribute significantly to the public's understanding of how the DOE determines what and how events at T Plant are included in the occurrence reports at the Hanford Nuclear Site.

Second Fee Waiver Requirement (Commercial Interest):

Factor A: Commercial Interest of Requester

1. Hanford Challenge, a non-profit public interest group, requests this information on behalf of our members and the public. Hanford challenge does not seek this information for a use or purpose that furthers the commercial trade or profit interest of Hanford Challenge.
2. Hanford Challenge will not profit from the requested information. Hanford Challenge will not receive monetary or other benefits from disclosing the requested information to the public.
3. One of the main purposes of this request is to turn the documents over to the public and the media for no charge so that they may know more about what rises to the level of an occurrence report for T Plant.
4. Hanford Challenge has never received a profit from a FOIA request and will not with this FOIA request.

Factor B: Primary Interest of Disclosure

1. Hanford Challenge is not requesting the information for any private or commercial purpose and is a non-profit, public interest organization designated as a tax exempt entity under IRS code 501(c)(3). Our interest in the disclosure of these records is for public education, public participation, advocacy for public interest goals, and a more responsive and accountable government that promotes environmental protection and protection of human health and safety.

For the reasons stated above, Hanford Challenge hereby respectfully requests that any and all fees be waived for this FOIA request. Hanford Challenge looks forward to a response to this request within twenty (20) working days of the receipt of this letter.

If you have any questions or concerns about this FOIA request, please do not hesitate to contact Tom Carpenter or Nikolas Peterson at the contact information listed below.

Sincerely,

//Nikolas F. Peterson

Nikolas Peterson, Legal Director

Hanford Challenge

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