



VIA EMAIL – Delivery and Read Receipt Requested

August 4, 2021

U.S. Department of Energy
Freedom of Information Act Office
ATTN: Dorothy Riehle
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RE: Freedom of Information Act Request – JUNE 18, 2021 TX FARM INCIDENT

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 and communications related to—or generated in connection with—the June 18, 2021 TX Farm Incident.

This request is intended to include, but not be limited to:

1. Records and communications include, but are not limited to: documents, memos, work packages, reports, incident reports, event reports, environmental sampling documentation, interview notes with workers, Problem Evaluation Requests (or equivalent name of document used to report and track safety concerns).
2. Any and all emails, text messages, instant messaging (for example, Microsoft Teams, Slack, etc) related to or generated in connection with the June 18, 2021 TX Farm Incident.

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 agrees to limit the timeframe of this request from June 2021 to the current date (August 4, 2021).

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. This includes the local Department of Energy offices and the contractors, including Washington River Protection Solutions.

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) is 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). "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/or control of the Department of Energy (DOE) relating to the Department’s mission of cleaning up the Hanford Site.
2. The act of a federal government agency (here, the U.S. DOE) tracking and investigating incidents that happen on the Hanford Site is clearly an operation/activity of the federal government.
3. The operation or activity of the federal government (DOE) is not limited to the event report itself, but also includes the supporting documentation, communications, sampling, etc.

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 or otherwise common knowledge among the general public.
2. To the best of Hanford Challenge’s knowledge, the DOE has not released a single document relating to this incident. The only information readily available to the public includes a few Tweets from reporters and one article in a newspaper.
3. The requested communications will likely provide necessary insight into the mental impressions, reasons, and policy decisions of those involved in formulating, discussing, and finalizing the event report and other documents. The supporting documentation and communications will likely fill this gap of understanding by the public in this government operation/activity.
4. The supporting documents and communications requested will likely add insight into what the federal government (via employees/officials) considers at various stages of an event report and/or an incident like the one that happened at TX Farm on June 18, 2021. It will likely assist in explaining what was and was not important in this particular government operation/activity, which would enhance public understanding of this operation/activity.
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 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.
 - e. There is no other non-governmental organization in existence that has as much collective experience or expertise on Hanford cleanup issues as Hanford Challenge.
 - f. 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. In addition to the above-stated specific news company that has a proven record of specific interest in Hanford stories and can convey the information effectively, Hanford Challenge will also send out the likely press release from this information and accompanying documents generated from this specific request to our media list. Hanford Challenge maintains and updates a media contact of over 600 individuals that we send our press releases and accompanying documents to if any one of them are interested in further information we obtain from FOIA requests.
 - iii. As stated above, Hanford Challenge is often requested to appear or be interviewed for specific Hanford stories and does so on a regular basis.
 - iv. Hanford Challenge will likely share the requested information with the Hanford Advisory Board.
 - 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 (1,628 followers) and Twitter (1,485 followers)), report(s) (if appropriate), elected representatives, and public events.

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 support of activities relating to event reports in the Tank Farms.
2. The requested records will contribute significantly to the public's understanding of how DOE and its contractors respond to incidents at the Hanford Site while work is being done that is funded by taxpayer money.

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 for no charge and help the public understand the information and documents requested so that they may know more about how DOE conducts Hanford cleanup.
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.

