

VIA FACSIMILE 202-208-6677
HARD COPY TO FOLLOW VIA FIRST CLASS MAIL

April 11, 2002

Mr. William Wolf
Freedom of Information Act Appeals Officer
U.S. Department of the Interior
1849 C Street, NW
MS 5312 – MIB
Washington, DC 20240

Re: Freedom of Information Act (FOIA) Appeal—
Cheney Energy Task Force (No. 2001-C-300)

Dear Mr. Wolf:

We are writing to appeal the response of the Department of the Interior (“DOI” or “Department”) to NRDC’s Freedom of Information Act (FOIA) request dated April 26, 2001, relating to the Department’s involvement with the National Energy Policy Development Group (“NEPDG” or “Task Force”) chaired by Vice President Cheney. While we have tried to work with the Department over the past 11 months to obtain the information we requested, it is now apparent that the scope of the Department’s search for responsive documents is grossly inadequate. Among other things, the Department has unlawfully excluded calendar entries, correspondence, and meeting notes of contacts with non-governmental parties that were within the unambiguous language of our request. It is now clear, as a result of documents produced by other agencies involved in the Task Force, that what DOI represented as fully responsive to NRDC’s request is in fact far from fully responsive.

A variety of outside parties met with Secretary Norton and other agency officials regarding subject matters addressed by the Task Force. As best we can tell, the Department produced none of the documents identifying these meetings, only one piece of correspondence from these parties, and none of the minutes of these meetings. Consequently, the scope of the Department’s search woefully fails to respond to NRDC’s request. In addition, even within the limited responsive documents, the Department has unlawfully withheld some in whole or in part.

BACKGROUND

On April 26, 2001, NRDC submitted a request for records seeking information related to DOI’s participation in the NEPDG. Attachment 1. In particular, NRDC requested information regarding the identity of agency personnel involved in the work of the NEPDG, as well as any

contacts such personnel had with non-governmental parties. This request was assigned control number 2001-C-192.

Over the course of the past 11 months, NRDC contacted DOI numerous times regarding our April 26 request. During that period, NRDC continued to insist on full release of responsive documents, but worked with DOI staff to receive a partial production of the material sooner. In particular, on June 20, 2001, NRDC wrote to DOI indicating specific categories of documents responsive to NRDC's April 26 request that had not yet been received. Attachment 2. For several more months, DOI did not respond to NRDC's June 20 letter. On December 4, 2001, Sharon Buccino of NRDC called Sue Ellen Sloca, FOIA Officer in the Office of the Secretary at DOI, to inquire about the status of our request. Ms. Sloca indicated that DOI had not processed NRDC's requests further because it was assumed we had lost interest in the materials. Unfortunately, DOI came to this conclusion without consulting with NRDC.

On March 5, 2002, a federal judge ordered DOI to release by March 25 all documents responsive to a FOIA request with some similarity to NRDC's April 26 request. Memorandum Opinion & Order, Judicial Watch, Inc. v. U.S. Department of Energy, et. al., No. 01-0981 (D.D.C.).

On March 15, NRDC received via Federal Express what DOI represented to be all remaining documents responsive to NRDC's April 26 request.¹ Subsequently, on March 27, DOI provided NRDC a copy of the Vaughn index the Department prepared in response to litigation brought by Judicial Watch regarding its FOIA request.² This appeal is timely, having been filed within "20 working days after the records have been made available" as provided by 43 C.F.R. § 2.18.

DISCUSSION

A. The Department Failed to Identify and Provide All Responsive Documents as Requested by NRDC.

The screen the Department apparently used in searching for responsive documents was unlawfully narrow. DOI's search failed to produce documents that addressed subjects considered by the Task Force. As apparent from the calendar entries produced, DOI unjustifiably limited its search to documents that involved actual meetings of the Task Force or DOI's working group to support the Task Force. The unambiguous language of NRDC's April 26 request asked for the records of any and all meetings with individuals or groups from outside the agency that related to subject matters being considered by the Energy Task Force. NRDC's request, for example, explicitly sought "[r]ecords received from non-agency individuals or groups, contractors or

¹ DOI apparently treated NRDC's June 20, 2001 letter as a new request assigning it control number, 2001-C-300. We disagree with DOI's characterization of NRDC's repeated attempts to obtain the documents responsive to its April 26 request as new requests. All the documents requested by NRDC in its June 20 letter, as well as in this letter, are within the scope of NRDC's April 26 request.

² NRDC also received from DOI on June 5, 2001, an Index of Responsive Documents identifying the materials provided and those withheld in part or in whole.

temporary full-time agency employees relating to the work of the Task Force.” See Attachment 1. These subject matters include, among other things: drilling and exploration on public lands both onshore and offshore, streamlining approvals for energy projects, and pipeline right-of-way approvals.

A review of the documents received by the Department of Energy (DOE) in response to the identical FOIA request from NRDC has exposed the gross inadequacy of DOI’s search.³ Although the Energy Department likewise has failed to respond completely, DOI’s efforts fall far short of its sister agency. In fact, emails produced by DOE that include Interior personnel on the recipient list were not produced by Interior.

1. DOI Failed to Identify at Least One Agency Employee Intimately Involved in the Department’s Participation in the Task Force.

NRDC’s April 26 request asked for “[t]he calendars dating from January 21, 2001 to the present of the agency head and any agency staff performing work related to the Task Force.” Not having known at the time who at the agency was involved in the work of the Task Force and to what extent, NRDC agreed to limit the calendar request to four specific individuals, Secretary Norton, Sue Ellen Wooldridge, Tom Fulton and Ann Klee. NRDC clearly stated that we were limiting this element of the request in order to get something more quickly, while reserving our right and interest in obtaining everything we requested.

The documents obtained from the Energy Department reveal that an additional agency employee, William Bettenberg, was intimately involved in DOI’s participation in the Task Force. In fact, Mr. Bettenberg was one of three DOI employees, along with Ms. Wooldridge and Mr. Fulton, who were members of the inter-agency working group identified to staff the work of the Task Force. Attachment 3. DOI’s failure to include the calendar of Mr. Bettenberg in response to our April 26 request is a gross omission.

In addition, NRDC believes that Secretary Norton’s Chief of Staff, Brian Waidmann, may have met with outside parties regarding matters that were considered by the Energy Task Force. In fact, one record that NRDC did receive from DOI documents a request from an outside party to meet with Mr. Waidmann. Specifically, on May 1, 2001, United Seniors Association submitted a written request per an earlier telephone conversation to meet with Mr. Waidmann, Secretary Norton’s Chief of Staff, to brief him on their Energy Freedom Campaign. Attachment 4. This campaign criticizes “overregulation of energy production” and “excessive regulation of energy exploration,” issues directly related to Task Force recommendations.

³ DOE produced three boxes of documents, approximately 11,000 pages on March 25, and approximately 1,000 additional pages on April 10. The Energy Department had identified approximately 26,000 pages of responsive records. Likewise, the U.S. Environmental Protection Agency identified approximately 20,000 responsive pages. The total material produced by the Department of Interior is approximately three file folders. Given that many of the Task Force recommendations address matters within Interior’s jurisdiction, the number of documents responsive to NRDC’s FOIA request in control of DOI should be comparable to that in control of DOE and EPA.

Furthermore, NRDC's request plainly asked for entire calendars dating from January 21, 2001. NRDC did not agree to limit the calendars to certain portions. In fact, as DOI's FOIA officer indicated in a March 18 telephone conversation with NRDC's Sharon Buccino, providing the entire calendars is an easier task than identifying specific portions that might be hand-picked for production. Given the unambiguous language of NRDC's April 26 request, the Department had no basis whatsoever to exclude calendar entries of meetings with outside parties that may have involved subject matters considered by the Energy Task Force.

In sum, NRDC demands that DOI immediately provide the complete calendars dating from January 21, 2001, for Secretary Norton, Sue Ellen Wooldridge, Tom Fulton, Ann Klee, William Bettenberg and Brian Waidmann.⁴ Given the senior positions of all of these individuals and the visibility of the issues addressed by the Task Force, each of the named individuals were likely to have had numerous meetings with outside parties that discussed subjects that were considered by the Task Force.

2. The Department Failed to Provide Correspondence to and from Secretary Norton and other Agency Officials with Outside Parties Relating to Matters Considered by the Energy Task Force.

Comparing the documents provided by DOI to NRDC in response to our FOIA request with those provided by the Energy Department in response to the identical request reveals that DOI has either been extremely careless in responding, or has deliberately and improperly failed to provide documents covered by our request. This is not a case involving “purely speculative claims about the existence and discoverability of other documents.” SafeCard Services, Inc. v. SEC, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (quoting Ground Saucer Watch, Inc. v. CIA, 692 F.2d 770, 771 (D.C. Cir. 1981)). The Department's search could not have been a reasonable one, since it did not turn up documents that a sister agency found in responding to the same request. See Campbell v. United States Dep't of Justice, 164 F.3d 20, 28 (D.C. Cir. 1998) (reasonableness judged retroactively, at the end of the search).

In our April 26 request, NRDC requested all “[r]ecords received from non-agency individuals or groups, contractors or temporary full-time agency employees relating to the work of the Task Force.” See Attachment 1. A comparison of the documents supplied by DOI to documents received from the Energy Department reveals that DOI did not provide NRDC copies of all responsive documents sent to DOI by external sources, *i.e.*, non-agency individuals or groups. Examples of external documents that were sent to DOI according to DOE documents but were neither provided to us nor identified on the chart of the Secretary's correspondence include, but are not limited to, letters from P. Benjamin Underwood, Global Environmental Solutions, dated April 22, 2001 to the President, Energy Secretary Abraham, and Secretary Norton re Coordinating the National Energy Policy and the National Environmental Policy act (NEPA) (Attachment 6); and from Earnest W. Davenport, Chairman and CEO, Eastman Chemical Co.,

⁴ The failure to provide the full calendars of agency staff involved in work related to the Task Force was obvious immediately to NRDC upon receipt of the materials provided on March 15. NRDC raised this in a March 15 letter faxed to Sue Ellen Sloca. Attachment 5. In that letter, NRDC explicitly reserved the right to raise additional issues on appeal.

and William Cavanaugh, Chairman, President and CEO, Progress Energy, Inc., for The Business Roundtable, dated April 25, 2001, containing Policy Recommendations to the Energy Task Force (Attachment 7).⁵

As illustrated by these two examples, DOI's search in response to NRDC's April 26 request was grossly inadequate. NRDC demands that the Department redo its search immediately to produce any and all correspondence to and from Secretary Norton and other agency officials with outside parties relating to matters considered by the Energy Task Force.

3. The Department Failed to Provide Correspondence to and from Agency Staff and other Government Employees Relating to Matters Considered by the Task Force.

In our April 26 request, NRDC requested “[r]ecords relating to the purpose or work plan of the Task Force and any and all working groups, subcommittees or other groups formed to assist the Task Force.” NRDC also requested on April 26 “[re]cords prepared by agency personnel relating to the work of the Task Force.” See Attachment 1. However, DOI did not provide NRDC copies of emails that we received from the Energy Department that reveal on their face that they also went to or were sent from DOI personnel who participated in the work of the Task Force. These omitted emails included numerous emails to and/or from William Bettenberg (in particular), as well as from Tom Fulton and Sue Ellen Wooldridge. NRDC has identified more than 30 such emails provided by DOE that were sent to or from DOI personnel involved in the Task Force. See, e.g., Email from William Bettenberg to Margot Anderson, Pete Culp and others, 4/13/01, subject: two tax proposals (Attachment 8); Email from Margot Anderson to William Bettenberg, 3/22/01, re “help”(Attachment 9); Email from Michelle Poche, to Margot Anderson, Tom Fulton, Sue Wooldridge and others, 5/8/01, subject: “Urgent – National Energy Plan – Citations Needed” (Attachment 10); Email from William Bettenberg to Margot Anderson, cc: John Pryor Mitchell Baer, 3/30/01, OCS 1 pager (Attachment 11).

Once again, DOI's failure to provide these documents illustrates the gross inadequacy of its search for responsive documents. While we already have the specific documents mentioned, DOI must be in possession of numerous more records like the ones identified above that the Department has not released. NRDC demands that the Department redo the search immediately.

Even assuming that some parts of some or all of these documents are subject to a claim of privilege, DOI has no basis for a blanket claim that they can all be legitimately withheld and indeed no such claim has been made. That is, none of these emails are listed as being withheld under any exemption on the “Index to Responsive Documents” provided in the June 5, 2001 response. Nor are they listed on the Vaughn index prepared by the Department in the Judicial Watch case.

⁵ Since these documents were in fact communications from non-governmental entities, they clearly are not protected from disclosure by Exemption 5 of FOIA or any other exemption. Neither document was listed on either the Index to Responsive Documents or the Vaughn index referenced above as being withheld pursuant to a FOIA exemption.

4. The Department Failed to Provide Minutes, Notes or Other Records of Meetings Attended by Agency Staff relating to the Work of the Task Force.

In our April 26 request, NRDC requested “[m]inutes, notes or other records of meetings attended by the agency head or any agency staff relating to the work of the Task Force.” See Attachment 1. The limited documents provided to NRDC, however, include only notes of meetings of Task Force members, work groups and other intra-governmental groups and no notes of meetings held with external, non-government third parties. This omission is probably related to DOI’s failure to include these meetings with outside parties in its search of the calendars of agency officials. As discussed above, meetings with outside parties relating to matters considered by the Task Force were unambiguously included within the scope of NRDC’s April 26 request. The Department has no basis whatsoever for its failure to provide minutes, notes and other records of meetings attended by agency staff with outside parties relating to the work of the task force. NRDC demands that DOI produce these materials immediately.

5. The Department Failed to Provide Records Responsive to NRDC’s Request Related to Screening for Conflicts of Interest.

In our April 26 request, NRDC requested “[r]ecords regarding any efforts by agency personnel or the Task Force to screen for conflicts of interest or bias among the individuals or groups providing advice relating to the work of the Task Force.” See Attachment 1. DOI has provided no records responsive to this request. NRDC specifically requests that the Department provide any and all financial disclosure forms, to the extent they are not legally prohibited from being publicly disclosed, for the following individuals: Secretary Norton, Sue Ellen Wooldridge, Tom Fulton, Ann Klee, William Bettenberg and Brian Waidmann.

B. The Department has Unlawfully Withheld Documents, in Whole and in Part, Pursuant to Exemption 5 as Narrowly Interpreted by the Courts.

The Department has failed to meet its burden to justify much of what has been withheld pursuant to Exemption 5.⁶ To qualify for Exemption 5, a document must be both “predecisional” and “deliberative.” See, e.g., EPA v. Mink, 410 U.S. 73, 89 (1973). Given FOIA’s policy to promote disclosure, federal courts have repeatedly admonished, “[a]s with all exemptions under FOIA, the deliberative process privilege must be construed as narrowly as is consistent with efficient government operations.” Army Times Pub. Co. v. Department of Air Force, 998 F.2d 1067, 1069 (D.C. Cir. 1993), citing Wolfe v. HHS, 839 F.2d 768, 773 (D.C. Cir. 1988) (*en banc*). Likewise, federal courts have placed the burden on government agencies to justify claimed exemptions from disclosure with specific details rather than conclusory and generalized allegations of privilege. Oglesby v. Department of Army, 79 F.3d 1172, 1178 (D.C. Cir. 1996), quoting Vaughn v. Rosen, 484 F.2d 820, 826 (D.C. Cir. 1973). In this case, DOI has withheld numerous documents, in whole and in part, which on their face should have been provided.

⁶ Exemption 5 protects from disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5).

In particular, DOI has unlawfully withheld information that is factual and not deliberative; information that represents final agency positions; information that has been released to outside parties; and information that relates to the agency's decision-making process itself.⁷

1. The Department Failed to Segregate and Provide All Factual Material.

As the Department itself has acknowledged, Exemption 5 is applicable only to "deliberative documents" and, consequently, it generally does not cover factual material or factual portions of otherwise deliberative documents. *See, e.g.,* Department of Justice, FOIA Guide. The Vaughn index provided to NRDC on March 27 identifies documents in which factual background information has been provided (see, e.g., items 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16). The Vaughn index, however, fails to fulfill the Department's legal obligation to justify in detail why specific factual information has been withheld.

In its Vaughn index, DOI appears to have limited the factual information provided to "background" information. This is an unlawfully narrow interpretation of the Department's disclosure obligations under FOIA. While FOIA does allow factual information that would expose an agency's deliberations to be withheld, *see, e.g., Skelton v. United States Postal Service*, 678 F.2d 35, 38-9 (1982), the Act does not limit the agency's affirmative obligation to background facts. Moreover, just because facts are not "background" facts does not mean that they reveal the exercise of someone's judgment. The Department's formulaic recitations do not satisfy its burden of explaining why certain factual material – i.e., non-background facts – has been withheld. *See, e.g., Army Times Publ'g Co. v. Department of the Air Force*, 998 F.2d 1067, 1071 (D.C. Cir. 1993).

One example that illustrates the Department's unlawful withholding of factual information is an April 18, 2001 email from William Bettenberg has been redacted to delete the name(s) of recipients, the names of any persons who were copied on the message and the subject line. Attachment 12. No legitimate reason exists for withholding this factual information and none was in fact provided. The email in question is not listed on either the Department's "Index to Responsive Documents" or its Vaughn index.

While other documents may be deliberative and predecisional, the Department has failed to provide the specific details necessary to justify withholding them. For example, the document, Addressing Energy Opportunities, March 20, 2001, on its face is not deliberative (or the give and take of ideas, options, opinions in reaching a conclusion), but suggests a description of energy potential on public lands. Attachment 13. If DOI wishes to withhold large portions of this document as it has, the Department must provide a detailed justification regarding why the

⁷ In addition, several of the items identified as being produced were not in fact provided to NRDC. To the best of our knowledge, NRDC did not receive any of the following documents identified in the Vaughn index as being released in part: 2, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 48, 49. We find this omission impossible to reconcile with the written statement provided by the Department that no documents were released to Judicial Watch that had not also been released to NRDC. Letter from Sue Ellen Sloca, DOI FOIA officer, to Sharon Buccino, NRDC, March 27, 2002.

information is predecisional and deliberative and not merely factual. No such explanation has been provided.

Furthermore, DOI has unlawfully withheld the identify of non-governmental third parties with whom it engaged in connection with work related to matters considered by the Task Force and with whom it shared related documents. These as-yet-unidentified individuals included the recipients (i.e., the addressee(s) and any persons who received copies) of an email sent on April 18, 2001 by William Bettenberg, all of whose names have been redacted without explanation. Attachment 12.⁸

2. The Department Failed to Segregate and Provide All Agency Policies and Final Positions.

Several items listed in the Vaughn index are identified as final reports.⁹ These reports – by their very names (“final” as admitted by Interior in its Vaughn index) – reflect final agency policy or interpretation and are not exempt. Each one of these areas addressed by these final reports is a *specific* area included in the National Energy Policy produced by the Task Force. In addition, many of these reports contain descriptions of existing conditions regarding public lands and energy – such as impediments identified by DOI to access or to drilling operations, or conditions identified by DOI as in need streamlining or fast-tracking – and these are in no way “predecisional.” The final reports are DOI statements of its view of conditions on the ground, not a process used in reaching a decision. Examples include, “energy potential” on Alaska’s North slope, “energy opportunities” on tribal lands and “siting of rights-of-way.” Simply put, these documents discuss factual situations, existing site conditions and do not constitute thought processes involved in decision-making. These documents must have numerous pages of facts – beyond those few that were not redacted – that must be released.

The documents identified in this section illustrate the Department’s failure to disclose records that are final and therefore not protected as predecisional. Contrary to DOI’s assertion,¹⁰ documents containing the Department’s final positions that were submitted to the Task Force are not predecisional. NRDC’s FOIA request was made to DOI; whatever documents are in DOI’s control that represent DOI’s final position must be disclosed. Even if they were predecisional, the factual portions of the documents must be disclosed.

3. The Department Failed to Segregate and Provide All Records Released Outside of the Agency.

⁸ No claim of privilege as been made for redacting part of this email. The email was not listed on either the Department’s Index to Responsive Documents or its Vaughn index.

⁹ These items include: Final Coal Team Report, March 13, 2001; Final Environmental Processes Review Team Report, March 13, 2001; Final Hydropower Reforms and Initiatives Team Report, March 16, 2001; Final Hydropower Team Energy Task Force Paper, March 15, 2001; Final Land Management Planning Team Report, March 14, 2001; Final Alaska North Slope Team Report, undated; Final Outer Continental Shelf Oil and Natural Gas Resource Access Team Report, undated; Final Oil, Gas, and Geothermal Team Report, April 5, 2001; Final Rights-of-Way Team Report, March 13, 2001; Final Tribal Lands Review Team Report, undated; Energy Options Associated with Federal and Indian Lands, March 20, 2001.

¹⁰ Vaughn Index, at p. 1.

Given the high visibility of issues addressed by the Task Force within DOI's jurisdiction, such as drilling in the Arctic Refuge and expediting exploration and production on other public lands, agency personnel undoubtedly were in contact with parties outside the government regarding matters considered by the Task Force. As discussed above, the scope of DOI's search in response to NRDC's request for this material was grossly inadequate. This does not appear to be the case that DOI has withheld as exempt communications with outside parties, the Department simply has not identified them. Even if these records contain information that might otherwise be exempt, no claim for exemption exists where the information was released to outside parties. *See, e.g., Mead Data Central, Inc. v. Department of Air Force*, 566 F.2d 242, 253 (D.C. Cir. 1977) ("If the information has been or is later shared with third parties, the privilege does not apply.").

For example, many of the email communications between agency staff related to the Task Force were also circulated to at least one individual or group whose email address is not a government address, *i.e.*, commcoll@aol.com. *See* Attachment 14.¹¹

4. The Department Failed to Segregate and Provide All Records Addressing the Agency's Role in the Work of the Energy Task Force.

Exemption 5 does not justify withholding documents where the agency's decision-making process *is itself at issue*. *See Mr. and Mrs. "B" v. Bd. of Ed. of Syosset Cent. Sch. Dist.*, 35 F. Supp. 2d 224, 230 (E.D. N.Y. 1998); *Burka v. N.Y.C. Transit Authority*, 110 F.R.D. 660, 667 (S.D. N.Y. 1986). One of NRDC's purposes in seeking the information requested is to evaluate whether decisions made by DOI to be included in the National Energy Policy and decisions to implement that policy are lawful. For example, NRDC seeks to evaluate whether DOI violated the Federal Advisory Committee Act requiring open and balanced decision-making. NRDC also seeks to evaluate whether DOI's decisions to approve and expedite energy exploration and production on specific public lands are arbitrary and capricious or otherwise in violation of the law. Consequently, certain documents that might be characterized as deliberative and predecisional are nevertheless subject to disclosure to the extent that they reveal the agency's motivation and nature of its decision-making process.

For example, NRDC can imagine no basis for withholding the portions of the briefing document "Addressing Energy Opportunities through Interior Department Programs" (Attachment 13) that the Department has withheld as deliberative. As stated above, this document on its face appears to contain factual information. To the extent it contains options presented to the Secretary and the justification for these options, the redacted information would directly relate to claims that DOI's decisions were arbitrary and capricious and not otherwise in accordance with the law.

CONCLUSION/ RELIEF REQUESTED

¹¹ This document lists names, organizations, e-mail addresses and other information for 12 different groups or teams and additional staff. It was received by NRDC on May 22, 2001.

In order to correct the DOI's failure to respond adequately to NRDC's April request, we demand that the Department immediately conduct another, more careful and more comprehensive review of documents within its control and provide NRDC with all documents within the scope of our request.

NRDC demands that DOI immediately provide all responsive records including, but not limited to the following: (1) the complete calendars dating from January 21, 2001, for Secretary Norton, Sue Ellen Wooldridge, Tom Fulton, Ann Klee, William Bettenberg and Brian Waidmann; (2) any and all correspondence to and from Secretary Norton and other agency staff with outside parties relating to matters considered by the Task Force; (3) any and all correspondence to and from agency staff and other government employees relating to matters considered by the Task Force; (4) any and all minutes, notes or other records of meetings attended by agency staff relating to the work of the Task Force; (5) financial disclosure forms to the extent they are not protected from public disclosure for Secretary Norton, Sue Ellen Wooldridge, Tom Fulton, Ann Klee, William Bettenberg and Brian Waidmann; (6) documents identified above that were listed in the Vaughn index provided to Judicial Watch as being partially released but which NRDC did not receive; (7) all factual material contained in documents partially or wholly withheld; (8) all agency policies and final agency positions in documents partially or wholly withheld; (9) all records, in part or in whole, for which an exemption was claimed that were released to outside parties; and (10) all records that relate to the agency's decision-making process itself.

The fact that NRDC has obtained some DOI documents responsive to our request via DOE in no way excuses the Department's failure to provide those and all other documents within the scope of our request for which no legal justification to withhold exists. On the contrary, the fact that DOE provided NRDC these documents but DOI did not reveals clearly that DOI did not undertake a reasonable search. Because of its grossly inadequate response and the length of time that has passed since the April 2001 request, NRDC demands that DOI provide the requested information within 20 working days as mandated by FOIA.

Sincerely,

Sharon Buccino
Senior Attorney
NRDC-DC
202-289-6868

Johanna Wald
Senior Attorney
NRDC-San Francisco
415-777-0220