

January 12, 2004

Carol Iancu
Assistant Attorney General
Environmental Protection Division
Commonwealth of Massachusetts
Office of the Attorney General
200 Portland Street
Boston, Massachusetts 02114

Re: Freedom of Information Act Request

Dear Ms. Iancu:

This is in further response to your December 4, 2003 Freedom of Information Act (FOIA) request, which was received by the Council on Environmental Quality (CEQ) on December 4, 2003 (fax). You requested copies of:

All records of, or concerning, communications by or to CEQ in connection with the preparation or issuance of the Memorandum of Robert E. Fabricant, then General Counsel of EPA, to Marianne L. Horinko, then Acting Administrator of EPA, dated August 28, 2003, concerning "EPA's Authority to Impose Mandatory Controls to Address Global Climate Change under the Clean Air Act".

As I have explained, by letter dated January 5, 2004, your request requires us to consult with other agencies regarding withholding determinations that may be made by this agency. Based on a preliminary search of CEQ records, it is apparent that your request requires CEQ to evaluate numerous intra-governmental communications – including those that are deliberative and therefore exempt from disclosure under FOIA, 5 U.S.C. § 552(b)(5), as well as those that are not.

Therefore, we must resolve your request for fee waiver before CEQ can commit further resources to your FOIA request. Your request for a fee waiver does not provide sufficient information to enable CEQ to assess whether you are entitled to a fee waiver under the standards of FOIA, 5 U.S.C. § 552(a)(4)(A)(iii). Your request asserts that this statutory test is met "for the same reasons that a prior, related request dated July 15, 2003, regarding the *U.S. Climate Action Report 2002* did." Requests for a waiver or reduction of fees must be considered on a case-by-case basis and must address the statutory standard in sufficient detail for CEQ to make an informed decision as to whether we can appropriately waive or reduce fees. Your statement that "the underlying context and rationale are similar" to your prior FOIA request does not provide sufficient explanation of how you meet the FOIA standard for fee waiver. You also offered to provide further explanation, if necessary. In response to this letter, please address the statutory

standard for consideration of a request for fee waiver, with particular attention to the following factors:

1. Specifically identify the "operations or activities of the government" concerned.
2. Explain how this disclosure is "likely to contribute" to the public's understanding of the specific government operations or activities.
3. Explain how the disclosure would contribute to the understanding of the public at large, with particular description of your qualifications to disseminate the information to the public.
4. Explain how the disclosure will contribute "significantly" to the public understanding of government operations or activities.

If we receive no response from you within sixty days of the date of this letter, we will assume that you have no additional information that you wish to submit in support of your request for a fee waiver and we will render a final decision on the fee waiver request based on the existing administrative record. Please feel free to contact me at 202-395-3449, or by email at eboling@ceq.eop.gov, if you have any questions regarding the issues raised in this letter. Thank you for your cooperation in this matter.

Sincerely,

Edward A. Boling
Deputy General Counsel
Freedom of Information Officer