

FOIA MARKER

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Collection/Record Group: Clinton Presidential Records
Subgroup/Office of Origin: Council on Environmental Quality
Series/Staff Member: Kathleen (Katie) McGinty
Subseries:

OA/ID Number: 4299
FolderID:

Folder Title:
Freedom of Information Act (FOIA)

Stack:	Row:	Section:	Shelf:	Position:
S	61	7	1	3

NICK J. RAHALL II
3d DISTRICT, WEST VIRGINIA

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION

CHAIRMAN
SURFACE TRANSPORTATION
WATER RESOURCES
AND ENVIRONMENT
ECONOMIC DEVELOPMENT

COMMITTEE ON NATURAL RESOURCES

ENERGY AND MINERAL RESOURCES
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AND PUBLIC LANDS

Congress of the United States
House of Representatives
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(304) 752-4934

101 NORTH COURT ST., P.O. Box 5
LEWISBURG, WV 24901-0005
(304) 647-3228

December 15, 1993

1/27 Called Debbie ✓

Ms. Ann Saurman
The White House Office on
Environmental Policy
Room 360
Old Executive Office Building
Washington, DC 20501

RE: Harold Turner
829 Albemarle
Bluefield, WV 24701

Dear Ms. Saurman:

The above-referenced individual has contacted my office requesting assistance with obtaining the documentation outlined in his enclosed letter.

Since this is a matter that is under your jurisdiction, I am referring it to your office for your consideration. Any favorable consideration which may be extended to my constituent will be greatly appreciated.

Please reply to my Bluefield District office, 601 Federal Street, Room 1005, Bluefield, West Virginia 24701.

With warm regards, I am

Sincerely,



NICK J. RAHALL, II
Member of Congress

NJR/dls

Enclosure

Ms. Ann Saurman
The White House Office on Environmental Policy
Room 360
Old Executive Office Building
Washington, DC 20501

Dear Ms. Saurman:

Under FOIA (Freedom of Information Act), I am requesting all documentation -- including but not limited to minutes of the meeting and all reports presented by both the federal government and the Brookfield Group and the McDowell Co. Solid Waste Authority -- when the meeting was held, which I believe was Oct. 14.

The McDowell Solid Waste Authority in conjunction with the Brookfield Group of Indiana plans to construct a facility to convert waste into ethanol.

I look forward to this documentation within two weeks of receipt of this request.

Sincerely,



Harold Turner
829 Albemarle
Bluefield, WV 24701

Nov. 16, 1993

THE WHITE HOUSE

WASHINGTON

December 6, 1993

Mr. Jeff A. Taylor
Evans-Novak Political Report
1750 Pennsylvania Avenue, N.W.
Room 1312
Washington, D.C. 20006

RE: FOIA Request for Federal Excise Tax Reports

Dear Mr. Taylor:

Bernard W. Nussbaum, Counsel to the President, asked me to reply to your July 23, 1993 letter requesting documents related to federal excise taxes owed by airline charters used by the White House travel office. Your request is based on the Freedom of Information Act (FOIA), 5 U.S.C. § 552. I apologize for the delay in responding to your letter.

The FOIA applies only to records maintained by "agencies" within the Executive Branch. See 5 U.S.C. § 552(f). The Office of the President, including the President's immediate personal staff and units in the Executive Office whose sole function is to advise and assist the President, is not an "agency" for the purposes of FOIA. Thus, the White House is not an "agency" for the purposes of FOIA. Consequently, FOIA does not establish a statutory right to the documents that you have requested from the Office of the President.

Sincerely,

Marvin Krislov
Special Counsel to the President
Office of the Counsel to the President

11-24

THE WHITE HOUSE
WASHINGTON

Frank -

We have received
this FOIA request recently.
I appreciate your help
in responding to this
request. Thanks!

Tilly Lindseth

X6531

360 OEOB

Ms. Ann Saurman
The White House Office on Environmental Policy
Room 360
Old Executive Office Building
Washington, DC 20501

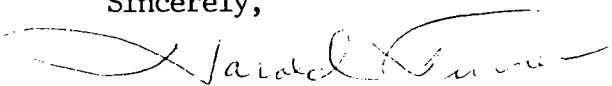
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Sincerely,



Harold Turner
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Bluefield, WV 24701

Nov. 16, 1993

1

THE WHITE HOUSE
WASHINGTON

September 14, 1993

MEMORANDUM FOR KATIE

FROM: TREY 
CC: ALL OEP STAFF
SUBJECT: FOIA REQUESTS

Attached is a memo from the Legal Counsel's office regarding FOIA requests and how OEP can "retain control" of documents distributed to agencies. Apparently this is not common practice, and we will need to work with Counsel's office on a case by case basis in such instances. Please let me know if you think it is worth pursuing the development of such a system of retaining control of documents for future initiatives.

THE WHITE HOUSE
WASHINGTON

9/13/93

Tracy -
Steve still hasn't
responded, so consider
this INFORMAL advice.

Lunk

X 7901

THE WHITE HOUSE

WASHINGTON

September 10, 1993

Steve —
any comments
F

MEMORANDUM FOR TREY LINDSETH
OFFICE ON ENVIRONMENTAL POLICY
U.S. DEPARTMENT OF STATE

FROM: Frank Sobol
Counsel's Office

SUBJECT: FOIA

Your 9/9/93 memo ask three questions. Here are my comments. We can discuss them when you have time.

1. FOIA and OEP

To the degree that OEP's sole function is to advise and assist the President, it would be part of the Executive Office of the President that is not an "agency" for the purposes of FOIA. Some offices in the Executive Office of the President are either covered by FOIA totally or partially because they have "substantial independent authority" to direct executive branch officials. If OEP starts to move in the direction of having functions that are "independent" of its advisory role to the President, it might become a FOIA "agency." Any such additional functions should be reviewed with the Counsel's office ahead of time.

2. FOIA, WH-Documents, and Other Agencies

Documents that originate in the White House, for example in OEP as an office that assists the President, and become part of some other agency's system of records can become subject to that agency's FOIA requirements.

Such non-White House agencies are required by DOJ guidelines to refer the documents to the WH for review or to consult with the WH on how to handle the documents under FOIA. Normally they contact the White House in writing and supply a copy of the document in question along with a request for our decision on releasing the document. During this review or consultation, we can assert any of the FOIA exemptions that are available, e.g., withhold the document because it is part of a deliberative process (552(b)(5)). We could also withhold the document based on a claim of executive privilege. If OEP finds itself in this position, it must involve Counsel's Office in the process.

3. Retaining Control of OEP Documents

An alternative approach to dealing with WH-originated documents that are shared with other agencies is to establish at the outset that the WH is maintaining control of those documents. This means that the WH must demonstrate a "manifest intent" "contemporaneously" with the publication of the document that it is solely a WH document. The WH has rarely employed this approach to controlling its documents. If OEP wants to consider this approach to its documents, it must review with matter with Counsel's Office prior to taking any action.

cc: Steve Neuwirth

THE WHITE HOUSE
WASHINGTON

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Any Comments.
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cc: Steve Neuwirth

THE WHITE HOUSE
WASHINGTON

September 9, 1993

MEMORANDUM FOR FRANK SOBOL

FROM: TREY LINDSETH
OFFICE ON ENVIRONMENTAL POLICY

SUBJECT: FOIA REQUESTS

I wanted to make sure we've covered all the bases on this issue.

1. OEP is NOT subject to FOIA requests.
2. The agencies we work with ARE subject to such requests and must provide the documents requested. Are the agencies required to check with your office, in conjunction with the OEP, before they actually provide the documents to the requestor?
3. In the future, how do we ensure that the OEP "retains control" of documents that we distribute to the agencies? Is there an official procedure to follow, similar to the classification process, or do we just need to get a stamp "OEP RETAINS CONTROL"?

Thanks again for your assistance.

THE WHITE HOUSE
WASHINGTON

8/26/93

Trey -

I am going to send GP

The standard No answer.

You might tell Ms. McGinty
that this request may go to other
agencies where OEP documents
could be accessible thru FOIA.
It might be useful for us to
discuss this with Steve N.
so we can see what the "big"
picture is on FOIAs and
OEP. — Thanks.

Frank

THE WHITE HOUSE

WASHINGTON

August 26, 1993

Mr. Gerald Lape
Legislative Coordinator
Greenpeace
1436 U Street, NW
Washington, DC 20009

RE: FOIA Request

Dear Mr. Lape:

Bernard W. Nussbaum, Counsel to the President, asked me to reply to your August 11, 1993 letter to Stephen Neuwirth, Associate Counsel to the President, requesting "any and all correspondence and/or communication from March 1993 until August 1993, between the law firm of Akin, Gump, Hauer, Strauss and Feld, and the White House, relating to commercial whaling." Your request is based on the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

The FOIA applies only to records maintained by "agencies" within the Executive Branch. See 5 U.S.C. § 552(a)(3). The Office of the President, including the President's immediate personal staff and units in the Executive Office whose sole function is to advise and assist the President, is not an "agency" for the purposes of FOIA. Thus, the White House is not an "agency" for the purposes of FOIA. Consequently, FOIA does not establish a statutory right to the documents, if such documents in fact exist, that you have requested from the Office of the President.

Sincerely,



Francis Thomas Sobol
Special Counsel to the President
Office of the Counsel to the President

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WASHINGTON • ZURICH

GREENPEACE

Greenpeace • 1436 U Street NW • Washington DC 20009 • Tel (202) 462-1177
Tlx 89-2359 • Fax (202) 462-4507

August 11, 1993

Stephen Neuwirth
Associate Counsel to the President
Office of Counsel
Old Executive Building
Washington, D.C. 20500

Re: **FREEDOM OF INFORMATION ACT REQUEST**

Dear Mr. Neuwirth:

This is a request by Greenpeace pursuant to the Freedom of Information Act, 5 U.S.C. Sec. 552 ("FOIA") for the release of the following records:

Any and all correspondence and/or communication from March 1993 until August 1993, between the law firm of Akin, Gump, Hauer, Strauss and Feld, and the White House, relating to commercial whaling. Records should include all memoranda, correspondence, letters, instructions, directives, data sheets, other data compilation, status reports, advice policy statement, intra-agency communications, communications with other agencies, persons or entities whether public or private and any other information regarding this matter.

If the White House does not have a particular record requested, please provide a statement that the document does not exist and a statement as to why it does not exist. If the White House knows of the existence of any of the records requested, please provide information about where and how this information can be obtained. In the alternative, if any requested record is not in the possession of your agency, please forward this request to any agency that may have records that are responsive to this request.

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If the White House claims that any document falls within an exemption to the FOIA, please provide a statement including the subject of the record, the date, the title of the record, the author and addressee, the office of origin and the basis for the exemption claimed. As you know, the FOIA provides that even if some requested materials are released with deletions of exempt information, each deletion should be marked to indicate the exemption(s) being claimed to authorize each particular withholding. In addition, Greenpeace requests that your agency exercise its discretion to release information that may be technically exempt where withholding would serve no important public interest.

Greenpeace requests, pursuant to 5 U.S.C. Sec. 552(a)(4)(A), that all records requested be furnished without charge because the requested information will primarily benefit the general public and help the public to understand government activities. Furthermore, requested documents will not be used for any commercial or profitable purposes.

The American public has expressed its opposition of commercial whaling through petitions that have been sent to various agencies, including the White House. The purpose of this request is to increase awareness and educate the American public to better understand the reasons and decisions why Norway has resumed commercial whaling and the cultural underpinnings of this decision. This issue has been and still is a major concern to the American public because of the public's interest in putting an end to whaling for profit. We believe the public has a right to know if our government is being pressured by outside influences on this issue.

The information received from this request will be disseminated to the public through our weekly newsletter, fact sheets, and our grass roots education program. Our staff is well trained to educate and present this type of information in a comprehensible manner to the general public. In addition,

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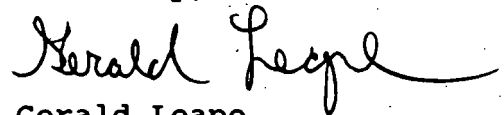
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Greenpeace is a non-profit public interest organization.¹ Therefore, it is appropriate for the White House to waive all fees related to the present request. However, if you deny this fee waiver request and intend to charge any fees, please inform Greenpeace of the amount of such fee prior to the processing of this request.

As required by the FOIA, Greenpeace expects a response to this request within 10 working days. If you have any questions regarding this request, please telephone me at (202) 319-2401.

Sincerely,



Gerald Leape
Legislative Coordinator
Greenpeace, Washington

¹ The legislative history of the 1974 amendments "clearly indicates" that Congress intended the public interest/benefit test to be "liberally construed," and that it was "consistently associated with request from journalists, scholars, and non-profit public interest groups." Ettlinger v. FBI, 596 F. Supp. 867, 872 (D. Mass. 1984) and materials cited therein. Litigation Under the Federal Freedom of Information Act and Privacy Act, p. 195, Allan Robert Adler, American Civil Liberties Union Foundation, Washington D.C., June 1990 (15th ed.).

THE WHITE HOUSE
WASHINGTON

September 9, 1993

MEMORANDUM FOR FRANK SOBOL

FROM: TREY LINDSETH
OFFICE ON ENVIRONMENTAL POLICY

SUBJECT: FOIA REQUESTS

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1. OEP is NOT subject to FOIA requests.
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Thanks again for your assistance.

Frank Sobol — 7901 8-9
12:25

- when FOIA request goes to Agencies, they shld contact us/^{you} before any documents go out, right?
- what can we do to ensure that agencies do NOT use documents for "other purposes" / to make these documents exempt under FOIA - "classified" stamp or "do not distribute" —

TO: OEP STAFF
FROM: TREY
SUBJECT: CHRON FILE SYSTEM

I appreciate your diligence in providing copies for the chron file of all documents sent on White House letterhead. The system currently in place seems to be working well. Attached is the index listing of all documents I now have on file. Please check this index against your personal lists/files/memories to see if there are any outstanding documents. Thanks for your help!

over →

CHRON FILE INDEX

DATE	TO	SUBJECT	STAFFER
8/23	Andrea Rutledge	OEP Computers	Zwally
8/23	CCMG	Cancellation of 8/24 Mtg	Chupka
8/23	Working Grp Chrs	Fact Sheets and Q & A's	Chupka
8/25	CCMG	Cancellation of 8/26 Mtg	Chupka
8/31	Alice Honea	White House Access	Zwally
9/1	CCMG	Meeting 9/2 4:00 pm	Chupka
9/2	President	Bumpers & Pryor - Wetlands	Laughlin
9/3	CCMG	Stakeholder List	Zoi/Chupka
9/3	Bo Cutter	Conservation Funding, NAFTA	Blank
9/3	President	OEP Activity Report	Lindseth
9/8	President	Bumpers & Pryor - Wetlands	Laughlin
9/8	Bo Cutter	Conservation Funding, NAFTA	Blank
9/8	CCMG	Thursday, 9/9 Meeting	Zoi/Chupka
9/8	Vice President	EPA Budget, Talk Pts. Browner	Zoi
9/9	Frank Sobol	FOIA Requests	Lindseth
9/10	Bo Cutter	Conservation Funding, NAFTA	Blank
9/10	President	OEP Activity Report	Lindseth
9/13	President	Mtg with Enviros on NAFTA	Blank
9/14	Katie	FOIA Requests	Lindseth
9/14	CCMG	Today's CCMG Meeting	Chupka
9/14	Roy Neel	POTUS Sched for Enviro Events	Zoi
9/15	Craig Livingstone	Administrative Contact	Zwally
9/15	WH Staff	Climate Chng AP Briefings	Chupka
9/15	WH Staff	Climate Chng AP Briefings (2)	Chupka
9/16	Alice Honea	Support for OEP Interns	Zwally
9/16	CCMG	Cancellation of Today's Mtg	Chupka
9/16	Rachel Mullally	President's CCAP Announcement	Lindseth
9/16	David Watkins	Full Time Staff in OEP	Zwally
9/17	CERCLA Reauth Com	Cancellation of 9/21 Mtg	Laughlin
9/17	President	OEP Activity Report	Lindseth
9/20	Cabinet	President's CCAP	Chupka
9/20	CCMG	President's CCAP	Chupka
9/21	WH Staff	President's CCAP	Chupka
9/21	Andrea Rutledge	OEP Office Space Plan	Zoi
9/22	Vice President	Weekly Lunch with the POTUS	Zwally
9/22	CERCLA Reauth Com	Process for Future Meetings	Laughlin
9/22	Cabinet	Recommended Phone Calls PCSD	Laughlin
9/24	Vice President	Environmental Media Awards	Zoi
9/24	President	OEP Activity Report	Lindseth
9/24	Katie	Correspondence Report	Lindseth
9/28	Wetlands Work Gp	Studds Bill	Laughlin
9/29	Vice President	Forest Service Leadership	McGinty
10/1	President	OEP Activity Report	Lindseth
10/1	Vice President	Natl Relig Partnership Mtg	Zwally

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*Trey -
yes - I
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it. Also, I think we
should minimize
the number of
memoranda
from this
office.
WJ*

*Trey -
I DON'T
UNDERSTAND WHAT
YOU MEAN BY "RETAIN
CONTROL"*

*WJ
* This is the
Counsel's office's
term for not allowing
the agencies to distribute
the documents and which
prevents the documents
from being subject
to FOIA requests.
Trey*

*if this doesn't
help, give me
a buzz*

THE WHITE HOUSE
WASHINGTON

9/13/93

Tracy -
Steve still hasn't
responded, so consider
this INFORMAL advice.

Lunk

X 7901

THE WHITE HOUSE

WASHINGTON

September 10, 1993

2-1-
Steve -
any comments.
F

MEMORANDUM FOR TREY LINDSETH
OFFICE ON ENVIRONMENTAL POLICY
U.S. DEPARTMENT OF STATE

FROM: Frank Sobol
Counsel's Office

SUBJECT: FOIA

Your 9/9/93 memo ask three questions. Here are my comments. We can discuss them when you have time.

1. FOIA and OEP

To the degree that OEP's sole function is to advise and assist the President, it would be part of the Executive Office of the President that is not an "agency" for the purposes of FOIA. Some offices in the Executive Office of the President are either covered by FOIA totally or partially because they have "substantial independent authority" to direct executive branch officials. If OEP starts to move in the direction of having functions that are "independent" of its advisory role to the President, it might become a FOIA "agency." Any such additional functions should be reviewed with the Counsel's office ahead of time.

2. FOIA, WH-Documents, and Other Agencies

Documents that originate in the White House, for example in OEP as an office that assists the President, and become part of some other agency's system of records can become subject to that agency's FOIA requirements.

Such non-White House agencies are required by DOJ guidelines to refer the documents to the WH for review or to consult with the WH on how to handle the documents under FOIA. Normally they contact the White House in writing and supply a copy of the document in question along with a request for our decision on releasing the document. During this review or consultation, we can assert any of the FOIA exemptions that are available, e.g., withhold the document because it is part of a deliberative process (552(b)(5)). We could also withhold the document based on a claim of executive privilege. If OEP finds itself in this position, it must involve Counsel's Office in the process.

3. Retaining Control of OEP Documents

An alternative approach to dealing with WH-originated documents that are shared with other agencies is to establish at the outset that the WH is maintaining control of those documents. This means that the WH must demonstrate a "manifest intent" "contemporaneously" with the publication of the document that it is solely a WH document. The WH has rarely employed this approach to controlling its documents. If OEP wants to consider this approach to its documents, it must review with matter with Counsel's Office prior to taking any action.

cc: Steve Neuwirth

THE WHITE HOUSE
WASHINGTON

September 14, 1993

MEMORANDUM FOR KATIE

FROM: TREY *[Signature]*
CC: ALL OEP STAFF
SUBJECT: FOIA REQUESTS

Attached is a memo from the Legal Counsel's office regarding FOIA requests and how OEP can "retain control" of documents distributed to agencies. Apparently this is not common practice, and we will need to work with Counsel's office on a case by case basis in such instances. Please let me know if you think it is worth pursuing the development of such a system of retaining control of documents for future initiatives.

*I'd pursue it, but it sounds like
it's a long shot -- very
uncertain procedure.*

THE WHITE HOUSE
WASHINGTON

9/13/93

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Shank

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Draft
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9/13/93

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Lunk

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THE WHITE HOUSE

WASHINGTON

September 10, 1993

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cc: Steve Neuwirth

THE WHITE HOUSE
WASHINGTON

9/13/93

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Frank

X 790/
—

THE WHITE HOUSE
WASHINGTON

September 10, 1993

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F

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cc: Steve Neuwirth

THE WHITE HOUSE

WASHINGTON

September 9, 1993

MEMORANDUM FOR FRANK SOBOL

FROM: TREY LINDSETH
OFFICE ON ENVIRONMENTAL POLICY

SUBJECT: FOIA REQUESTS

I wanted to make sure we've covered all the bases on this issue.

1. OEP is NOT subject to FOIA requests.
2. The agencies we work with ARE subject to such requests and must provide the documents requested. Are the agencies required to check with your office, in conjunction with the OEP, before they actually provide the documents to the requestor?
3. In the future, how do we ensure that the OEP "retains control" of documents that we distribute to the agencies? Is there an official procedure to follow, similar to the classification process, or do we just need to get a stamp "OEP RETAINS CONTROL"?

Thanks again for your assistance.