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Bermes, Peter

From: Samantha Caravello <scaravello@edf.org>

Sent: Wednesday, June 20, 2018 12:10 PM

To: Bermes, Peter

Cc: Creech, Christopher

Subject: RE: EDF FOIA Request Number EPA-HQ-2018-001268

Follow Up Flag: Follow up

Flag Status: Flagged

Hi Peter,

Thank you again for your detailed description of how we might narrow our request for correspondence from regional

custodians. Based on our conversation and the options you set forth in your email below, we would like to begin with

Search 1, Option 2, and then move on to Search 2, Option 3.

Thus, we would like to alter our November 1, 2017 request as follows:

For paragraph (2) of our request, which seeks copies of all internal correspondence and all correspondence between EPA

and outside parties containing the search terms delineated in the paragraph, we would like to narrow the request so

that for regional custodians' correspondence, we are first seeking records containing:

 reference to the new source performance standards for the oil and gas sector, Subpart OOOOa, or any of the

specific reports or regulatory provisions listed in paragraph (1) of our request; and

 containing one or more of the following terms within 10 words of the reference to the new source performance

standards for the oil and gas sector, Subpart OOOOa, or any of the specific reports or regulatory provisions listed

in paragraph (1) of our request:

o "deadline" or "deadlines";

o "delay," including any inflection thereof (e.g., "delays," "delayed," or "delaying");

o "extend," including any inflection thereof (e.g., "extends," "extending," "extension," or "extensions");

o "postpone," including any inflection thereof (e.g., "postpones," "postponed," "postponing," or

"postponement"); or

o "variance" or "variances."

For this search, we request a search for the entire family of items which contain the search terms.

After the first search is completed, we would like a second search of regional custodians' correspondence for records

containing:

 reference to the new source performance standards for the oil and gas sector, Subpart OOOOa, or any of the

specific reports or regulatory provisions listed in paragraph (1) of our request; and

 containing "comply," including any inflection thereof (e.g., "complies," "complying," "compliant," or

"compliance") within 5 words of the reference to the new source performance standards for the oil and gas

sector, Subpart OOOOa, or any of the specific reports or regulatory provisions listed in paragraph (1) of our

request.

For this search, we request a search for only items containing the search terms, and if an attachment contains the search

terms, always include the parent email.

We are not altering paragraph (1) of our November 1, 2017 request.

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As we also discussed on the phone, I just want to make clear that with respect to regional custodians, our request for

"correspondence" is now a request for these search terms. We decided that if these searches return an item that you

believe is not responsive to our request, you will reach out to me to discuss whether or not it is in fact responsive.

Please let me know if you have any questions. I look forward to speaking with you on June 28th regarding the CBI

process and to receiving the final production of non-CBI reports and the production of HQ correspondence.

Thank you,

Sam

From: Bermes, Peter <Bermes.Peter@epa.gov>

Sent: Monday, June 18, 2018 4:47 PM

To: Samantha Caravello <scaravello@edf.org>

Cc: Creech, Christopher <Creech.Christopher@epa.gov>

Subject: RE: EDF FOIA Request Number EPA-HQ-2018-001268

Hello Sam,

Thank you for speaking with Chris and I today. As discussed, we will touch base by phone on June 28 at 10:00 Mountain

Time to discuss the request generally, including an update on the CBI process for records claimed to be CBI. Also, you

can expect two productions by the end of the month: the final production of non-CBI reports and a production of HQ

correspondence.

Today we primarily discussed the initial collection of email correspondence from Regional custodians.

Document "families"

We can run the search to collect potentially responsive records a few different ways depending on your interest in the

"family" of a record. "Family" is the term we use to describe an email (the "parent") and any attachments (the

"children") that are associated with the email. We can run a search three different ways depending on your level of

interest in attachments that do not contain the search terms we settle on:

1. Search for only items which contain the search terms.

 If there is an email with 5 attachments, one of which contains the search terms, we would only identify

the attachment containing the search terms as potentially responsive.

2. Search for entire family of items which contain the search terms.

 If there is an email with 5 attachments, one of which contains the search terms, we would identify all 6

items as potentially responsive: the email and its 5 attachments.

3. Search for only items containing the search terms, and if an attachment contains the search terms, always

include the parent email.

 This option allows you to maintain the context that a parent email can provide while excluding

unrelated attachments.

 If there is an email with 5 attachments, one of which contains the search terms, we would identify the

attachment with the search terms and the parent email as potentially responsive, but we would not

identify the 4 attachments that do not contain search terms as potentially responsive.

Below, I lay out the different searches that we discussed and the number of potentially responsive items based on these

different methods of searching for families.

Search 1: No Comply/Compliance term

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The full text of the search is: ("40 C.F.R. §60.5420a(b)(9)(i)" OR "40 C.F.R. §60.5422a(b)" OR "40 C.F.R. §60.5420a(b)" OR

"OOOO(a)" or "OOOOa") w/10 ("deadline*" OR "delay*" OR "exten*" OR "postpon*" OR "variance*"). This search

removed the terms "comply" or "Compliance" from the second search string. Options are:

1. Search for only items which contain the search terms.

 207 items

2. Search for entire family of items which contain the search terms.

 403 items

3. Search for only items containing the search terms, and if an attachment contains the search terms, always

include the parent email.

 307 items

Search 2: Include Comply/Compliance within 5 words of the OOOO(a) string

The full text of the search is: ("40 C.F.R. §60.5420a(b)(9)(i)" OR "40 C.F.R. §60.5422a(b)" OR "40 C.F.R. §60.5420a(b)" OR

"OOOO(a)" or "OOOOa") w/5 ("Comply" or "Compliance"). The results of this search

divided by option are:

1. Search for only items which contain the search terms.

 1,267 items

2. Search for entire family of items which contain the search terms.

 2,621 items

3. Search for only items containing the search terms, and if an attachment contains the search terms, always

include the parent email.

 1,953 items

Next Steps

Please consider the options above and let me know which you would prefer. We will then review the records collected

by the search(es) to determine whether they are in fact responsive and whether FOIA exemptions apply. As you

suggested, one option would be to begin with some version of search 1, and if you find that the production does not

satisfy your request, to move on to some version of search 2. Please let me know if you have any questions. Thanks,

Peter

Peter Bermes

Attorney-Advisor, Office of General Counsel

United States Environmental Protection Agency

312-886-6631 | Room R1325

From: Bermes, Peter

Sent: Monday, June 18, 2018 9:39 AM

To: 'Samantha Caravello' <scaravello@edf.org>

Subject: RE: EDF FOIA Request Number EPA-HQ-2018-001268

Hello Sam,

I'll call you at 1PM mountain time today. Talk to you then.

Peter

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From: Samantha Caravello [mailto:scaravello@edf.org]

Sent: Tuesday, June 12, 2018 9:59 AM

To: Bermes, Peter <Bermes.Peter@epa.gov>

Subject: RE: EDF FOIA Request Number EPA-HQ-2018-001268

Monday the 18th at 1pm mountain time would work great for me - thank you! You can reach me at 303-447-7221, or let

me know if you'd prefer for me to call you. Thanks!

From: Bermes, Peter <Bermes.Peter@epa.gov>

Sent: Monday, June 11, 2018 4:46 PM

To: Samantha Caravello <scaravello@edf.org>

Subject: RE: EDF FOIA Request Number EPA-HQ-2018-001268

Great. I'm available next Monday anytime after 12:00 Mountain time. My Wednesday is almost wide open. Perhaps

Monday at 1:00 Mountain/2:00 Central? Or that same time on Wednesday? Let me know what works, I can be flexible.

Thank you,

Peter

From: Samantha Caravello [mailto:scaravello@edf.org]

Sent: Monday, June 11, 2018 3:52 PM

To: Bermes, Peter <Bermes.Peter@epa.gov>

Subject: RE: EDF FOIA Request Number EPA-HQ-2018-001268

Hi Peter,

Thank you for the updates. I think it would be helpful to discuss the search on a call, and ideally to run some terms in

real time to be sure we're coming up with an effective search. I have a good amount of availability on Monday, Tuesday,

and Wednesday of next week. Can you let me know what times would work best for you?

Thanks,

Sam

From: Bermes, Peter <Bermes.Peter@epa.gov>

Sent: Friday, June 8, 2018 4:33 PM

To: Samantha Caravello <scaravello@edf.org>

Subject: RE: EDF FOIA Request Number EPA-HQ-2018-001268

Hi Sam,

First, on the production that we expected to have by the end of May, it will come sometime in the near future, by the

end of the month at the latest. I didn't have the right information when I updated you last we spoke. I apologize and can

discuss if you like.

Second, as you know, you are the only one of our OOOO(a) requesters seeking email correspondence from Regional

custodians. We conducted an additional e-discovery collection to identify these records. We searched the outlook files

of Regional custodians identified by subject matter experts as likely to have responsive records. We started with the

following search terms:

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□ ("40 C.F.R. §60.5420a(b)(9)(i)" OR "40 C.F.R. §60.5422a(b)" OR "40 C.F.R. §60.5420a(b)" OR "OOOO(a)" or

"OOOOa") AND ("comply*" OR "compli*" OR "deadline*" OR "delay*" OR "due" OR "enforc*" OR "exten*" OR

"postpon*" OR "variance*")

o "*" is a wildcard, so "enforce*" would include enforce, enforcement, enforcing, etc

The first group of terms was designed to catch any mention of OOOO(a), and the second group of terms was taken

directly from the language of your request. The result is 6,564 potentially responsive emails or attachments, and if you

include the families (the emails/attachments associated with any document containing the terms), you get 11,510

documents.

What we found when we reviewed similarly large collections of emails from HQ custodians was that just because a

document contains these terms does not necessarily mean that it substantively discusses compliance issues associated

with OOOO(a). Often, OOOO(a) is mentioned but not discussed, and because we have terms like due, enforcement, and

compliance which are often used by these custodians who work in enforcement, the search is not meaningfully focused.

It will conserve limited resources if we are able to focus in on a more responsive set of records before beginning review,

and if we can do that, we'll be able to provide a quicker response. Would you be willing to work with me to focus our

search terms, in particular the second group of terms ("comply*" OR "compli*" OR "deadline*" OR "delay*" OR "due"

OR "enforc*" OR "exten*" OR "postpon*" OR "variance*"), with the goal of honing in on the documents most responsive

to your request?

If you would like to send me a modified search suggestion, I can apply it and let you know the results. It also may be

useful to discuss the search, run some terms in real time, and see if we can focus it on a call. As I mentioned, I likely

won't have significant time next week to discuss. I would be available the week of the 18th.

Please let me know what your thoughts are on focusing this collection of records and if you have any questions. Thank

you,

Peter

Peter Bermes

Attorney-Advisor, Office of General Counsel

United States Environmental Protection Agency

312-886-6631 | Room R1325

From: Samantha Caravello [mailto:scaravello@edf.org]

Sent: Friday, June 08, 2018 9:37 AM

To: Bermes, Peter <Bermes.Peter@epa.gov>

Subject: Re: EDF FOIA Request Number EPA-HQ-2018-001268

Hi Peter,

That sounds good. Sorry for the last-minute change. Thank you for being flexible and hope you have a great weekend!

Sam

On Jun 8, 2018, at 10:36 AM, Bermes, Peter <Bermes.Peter@epa.gov> wrote:

Hi Sam,

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I'm on a call now so I can't connect in the next half hour. I should be able to type up my

update/questions for you and we can resolve by email and perhaps a quick call next week. If that works

for you, let me know and you can look for an email from me later today. Safe travels,

Peter

From: Samantha Caravello [mailto:scaravello@edf.org]

Sent: Friday, June 08, 2018 9:30 AM

To: Bermes, Peter <Bermes.Peter@epa.gov>

Subject: Re: EDF FOIA Request Number EPA-HQ-2018-001268

Hi Peter,

Unfortunately (though maybe to be expected?) I am indeed having travel complications! I'm now on a

flight that departs at 11:50am eastern time and my layover is much shorter, so I might not be available

until about 6:50pm eastern time. If you can call me in the next half hour, that would be great, but if not I

will still try to call you when I land at 2pm eastern. If the plane is late and there's not enough time

before my next flight, I'll send you an email to let you know. The best number to reach me today would

be 516-353-8703. Can you just remind me of your phone number?

Thank you,

Sam

On Jun 7, 2018, at 5:17 PM, Bermes, Peter <Bermes.Peter@epa.gov> wrote:

HI Samantha,

If it isn't too much trouble and you have the time, tomorrow would be best for me.

Unfortunately scheduling-wise I'm in a week long training all next week and will be

largely out of pocket. I'll look for an email from you tomorrow if you're free to talk, and

if unexpected travel complications make it difficult for us to connect, I'll try to send you

the basic questions I have via email. Thanks,

Peter

From: Samantha Caravello [mailto:scaravello@edf.org]

Sent: Thursday, June 07, 2018 11:51 AM

To: Bermes, Peter <Bermes.Peter@epa.gov>

Subject: RE: EDF FOIA Request Number EPA-HQ-2018-001268

Hi Peter,

Thank you for the update. I will be traveling all day tomorrow but have a layover from

about 2pm eastern time to 3pm eastern time. Would it work if I give you a call in that window? I can email you when we land to give you a head's up. Otherwise, maybe we can talk first thing on Monday?

Thanks!

Sam

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From: Bermes, Peter <Bermes.Peter@epa.gov>

Sent: Thursday, June 7, 2018 7:52 AM

To: Samantha Caravello <scaravello@edf.org>

Subject: RE: EDF FOIA Request Number EPA-HQ-2018-001268

Hi Sam,

We have a collection of email records back for your request EPA-HQ-2018-001268, and I'd like to discuss the results with you. Would you be available for a call sometime tomorrow afternoon? Any time after 12:00 Mountain time works for me. I could likely also do a morning call if the afternoon is no good, just let me know what works for you. I

can also update you on the production that we expected to have out last week but have not yet produced. Thanks,

Peter

From: Bermes, Peter

Sent: Thursday, May 24, 2018 12:42 PM

To: 'Samantha Caravello' <scaravello@edf.org>

Subject: RE: EDF FOIA Request Number EPA-HQ-2018-001268

Hello Sam,

That is all correct. I'm expecting we'll have the collection of email correspondence available in early June and I will reach out to you at that time to set up a call. Thanks,

Peter

From: Samantha Caravello [mailto:scaravello@edf.org]

Sent: Thursday, May 24, 2018 12:09 PM

To: Bermes, Peter <Bermes.Peter@epa.gov>

Subject: EDF FOIA Request Number EPA-HQ-2018-001268

Hi Peter,

Thank you for taking the time to talk with me on the phone just now. As we discussed, we can expect a production containing the rest of the (non-CBI) reporting documents by the end of this month. We may also receive correspondence records from headquarters by the end of the month, although some of it may come out in June. You explained to me that you haven't received the collection of correspondence records from the regions yet, and so you don't yet have an estimate of the volume of those records or the expected production date.

I also asked about the status of EPA's CBI determination with the respect to the reporting documents that have been claimed to be CBI. You let me know that you have heard the timeline for their review is uncertain, but you will be able to give me a more substantive update (and possibly have someone from EPA OGC on the call) when the collection of regional correspondence comes back and we talk about that.

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Please let me know if I have omitted or misstated anything in this summary. Thank you again for your time and help.

Best,

Sam

Samantha Caravello

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