From:	Anderson, Cindy
To:	Jones, Gail-R
Cc:	Minoli, Kevin; Miller, Kevin
Subject:	15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)
Date:	Monday, October 28, 2013 3:37:40 PM
Importance:	High

Gail –

Kevin Miller and I would like to talk with Kevin Minoli for about 15 minutes, possibly tomorrow morning before 10 am if he's available, but whenever.

It's about CEI FOIA lawsuit regarding text message billing for Gina McCarthy.

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

Kelly, Lynn

From: Miller, Kevin
Sent: Tuesday, October 29, 2013 2:00 PM
To: Anderson, Cindy
Subject: Accepted: CEI v. EPA (13-1074) G.McCarthy text message bills

From:	Newton, Jonathan
To:	Kelly, Lynn
Subject:	Automatic reply: Litigation Hold Notice regarding CEI"s potential litigation against EPA concerning claims related to a FOIA request seeking text messages sent by Gina McCarthy on 18 specified dates
Date:	Monday, June 17, 2013 2:08:04 PM

I am out of the office until Monday, June 10, 2013.

From: Hamilton, Sabrina
To: Kelly, Lynn
Subject: Automatic reply: Litigation Hold Notice regarding CEI"s potential litigation against EPA concerning claims related to a FOIA request seeking text messages sent by Gina McCarthy on 18 specified dates
Date: Monday, June 17, 2013 2:08:02 PM

I will be out of the office until Tuesday, June 18, 2013 . If you need assistance with Correspondence, please contact Gloria Hammond or Martha Faulkner.

If you are inquiring about FOIAs, please contact the FOIA Coordinator for your program office or Tanya Meekins who will serve as my back-up. Thanks

From: Hammitt, Jennifer
To: Kelly, Lynn
Subject: Automatic reply: Litigation Hold Notice regarding CEI"s potential litigation against EPA concerning claims related to a FOIA request seeking text messages sent by Gina McCarthy on 18 specified dates
Date: Monday, June 17, 2013 2:08:06 PM

I am out of the office until Tuesday, June 18, and I will not be checking email at this time. If this is urgent please contact Kevin Miller at 202-564-2691, or I will return your message upon my return.

From: McDermott, Marna
To: Miller, Kevin; Kelly, Lynn; Cooper, Geoff
Cc: Guerrero, David
Subject: case deadline format on reg review agenda
Date: Friday, October 25, 2013 2:06:46 PM

It would help the FO enormously if y'all could adopt the standard reg review format for your deadlines.

This looks like:

Date -- action -- case name -- summary of subj matter (attorney)

For example:

10/15/2013 Status Report due in *ATI v. EPA*, FOIA request regarding McCarthy Text messages (Hammit)

THANKS!!

Marna McDermott
Associate Deputy General Counsel
U.S. Environmental Protection Agency
(202) 564-2890

From:	Anderson, Cindy
To:	Chris Horner
Cc:	Nebeker, Mark (USADC); Anderson, Cindy
Subject:	CEI v. EPA (13-1074) additional release
Date:	Friday, December 20, 2013 1:15:31 PM
Attachments:	cover ltr (12.20.13) add"l release.pdf single page (June 2011) corrected to show McCabe.pdf invoice incl. June 23-20, 2012 text message detail.pdf

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Mr. Horner –

This message conveys a cover letter dated today that explains the release of two additional documents related to your June 2013 request for invoices associated with the personal digital assistant provide by EPA for use of Gina McCarthy for a specified period of time.

Those two documents are also attached.
Please let me that you have received this.
It will also be send via U.S.P.S.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
To: Chris Horner
Cc: mark.nebeker@usdoj.gov
Subject: CEI v. EPA (13-1074) billing for Gina McCarthy text messages
Date: Tuesday, September 17, 2013 9:20:00 AM

Mr. Horner

As you know, we have been making every effort to work with you to satisfy your recent FOIA requests regarding Ms. McCarthy's text messages, the billing therefor, and other information. As part of that continuing effort, I sought confirmation from the Agency's billing office that handles all EPA-issued mobile devices regarding monthly invoices and learned that for a period of approximately six to eight months (from April 2011 to November 2011) AT&T bills sent to EPA for mobile device usage included some detailed listing of text messages (without the texts themselves) for the mobile device assigned to Ms. McCarthy who was then Assistant Administrator for the Office of Air and Radiation.
Prior to April 2011, when Ms. McCarthy had used Verizon for her mobile service, the bills were in the form that was sent to you last week, with only an aggregate number of text messages noted.

The EPA billing office indicated that until November 2011, AT&T provided monthly invoices for all Agency mobile devices on CDs from which it was possible to extract information about an individual user's text messaging. AT&T changed their billing in November 2011 to provide on-line invoices to EPA; we are now exploring whether data about individual use of text messaging can be extracted from this format.

I have requested that the bills for the months from April to November 2011 be sent to me as soon as possible. Because it appears from the single month sample that was extracted, the invoices are lengthy and contain a number of different phone numbers, it will likely take several days this week to review and redact any exempt information from these records (e.g., personal phone numbers).

In these circumstances, I have asked Mark Nebeker, the AUSA who is representing the EPA in this matter, to seek from the Court an extension of time before filing the Joint Proposed Briefing Schedule that is now due September 19, 2013. The purpose of the extension is to enable EPA to review the records and provide you with any releasable information. We would resume any discussion about withdrawal of the pending litigation once you have had an opportunity to review the records released to you.

Please advise Mr. Nebeker and me whether you will consent to such a motion.

Cindy Anderson
EPA/OGC

(202) 564-2690

From:	Nebeker, Mark (USADC)
To:	Chris Horner
Cc:	Anderson, Cindy
Subject:	CEI v. EPA, CA No. 13-1074
Date:	Thursday, September 12, 2013 9:57:03 AM
Attachments:	CEI_invoice.exh.pdf

Mr. Horner –

As you requested in your email message of August 29, attached is information that was extracted from random invoices for the time period that you had requested regarding billing for Gina McCarthy's text messages over three years.

You will see that the Data for "TXT Messaging" is an aggregate number. The number for this particular billing period is 117 which, I understand, corresponds to the same number in the information provided to you by the Office of Air and Radiation for the invoice of that date, 23-Jul-10, that is attributable to the EPA-provided mobile phone assigned to Ms. McCarthy.

Although phone calls are delineated by each number called and the airtime and charges, that is not true for text messages. It is my understanding the Agency does not receive a record from Verizon (or, in this case, its predecessor, AT&T) of individual text messages made by its employees, including Ms. McCarthy.

You may also note that this portion of the billing that is sent to EPA electronically for all telephone usage is for a phone number that was originally assigned to Frank Rusincovitch in 2008. I understand that, in accordance with EPA practice, one individual procured the 15 telephone devices in 2008 for the Agency and they were distributed to EPA officials as needed. The office responsible for tracking billing from the internal inventory database also keeps track of who is assigned to each device by means of the assigned telephone number. In this case, I believe, the number was activated for Gina McCarthy in 2009.

Finally, material on this document that does not relate to billing for text messages has been redacted as non-responsive.

Please let me know if this satisfies your inquiry and if your client is now prepared to dismiss some or all of the claims in the above civil action.

Mark Nebeker
(202) 252-2536

From:	Grady, Mary
To:	Miller, Kevin
Subject:	Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1074 D. DC
Date:	Monday, July 15, 2013 1:10:41 PM
Attachments:	CourtLink_Dockets_US-DIS-DCD_1_13cv1074_541927_7.15.2013_130805728.html CourtLink_Document_US-DIS-DCD_1_13cv1074_Idx_541927_7.15.2013_130806666.pdf

From:	Kelly, Lynn
To:	OGC GLO ILPG
Subject:	Filing in CEI Text Message Federal Records Act Case
Date:	Monday, January 06, 2014 9:17:07 AM
Attachments:	Doc 10.pdf

If this is of interest to anyone, or might become relevant, here is the motion to dismiss we filed on Friday. Below is the desk statement also as an FYI

Desk Statement:

On Friday, January 3, 2014, EPA moved to dismiss an October 2013 complaint filed against the Agency by the Competitive Enterprise Institute (CEI) concerning allegations about EPA's text message retention policy. The Agency moved to dismiss the complaint on the grounds that the FOIA, the Federal Records Act, and the Administrative Procedures Act, all fail to provide CEI with the relief sought in its complaint. CEI is seeking declaratory and injunctive relief and a writ of mandamus to forbid and prevent the alleged destruction of text messages by EPA.

EPA's advice to employees on preservation of text messages has consistently been that "[r]ecords created on your Mobile Device should be transferred to your office's recordkeeping system on a regular basis." (http://www.epa.gov/records/faqs/pda.htm).

Lynn Kelly | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | WJC North, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-3266

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From: Anderson, Cindy
To: CHorner@cei.org
Subject: FOIA request EPA-HQ-2013-009249
Date: Wednesday, September 11, 2013 2:39:00 PM
Importance: High

Mr. Horner –

I am writing in regard to the telephone conversation of August 29 between Mark Nebeker, Assistant U.S. Attorney, and you (to which I was also a party) about one of the pending FOIA lawsuits for which you serve as plaintiff's counsel.

After receiving information responsive to your earlier FOIA request for phone bills related to Gina McCarthy's use of text messages over a three-year period, you submitted an additional FOIA request, noted by number in the subject line above.

Based on the August 29 conversation, I understand that you intended the more recent FOIA request seeking "Certain Agency Records: Gina McCarthy Complete Phone/PDA bills, billing periods ending December 23, 2009, July 5, 2011" to be only "belt and suspenders" to assure that the organization you represent, Competitive Enterprise Institute, is sent the information that it continues to seek regarding billing for text messages related to Gina McCarthy's use of her EPA-issued mobile phone.

In these circumstances, I am writing now to let you know that processing of the more recent FOIA request regarding bills for Ms. McCarthy's text messages for two specified billing periods is now in abeyance, or tolled, pending potential resolution of the lawsuit related to the same information, that litigation being CEI v. EPA (13-1074, DDC).

I appreciate your acknowledging receipt of this message.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
To: Chris Horner
Subject: FOIA request EPA-HQ-2013-009249
Date: Wednesday, September 11, 2013 4:45:00 PM

Mr. Horner –

(this is corrected version of the email message that I sent minutes ago, which was missing the word "understand")

I understand from your response that you remain interested in the information that you requested that is now assigned the number EPA-HQ-2013-009249.

Processing of that particular request will continue unabated, without any tolling at this time, based on your representations below.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Chris Horner [mailto:CHorner@cei.org]
Sent: Wednesday, September 11, 2013 2:50 PM
To: Anderson, Cindy
Subject: RE: FOIA request EPA-HQ-2013-009249

Dear Ms. Anderson,

We are not aware of any progress in the litigation you refer to, as discussed, below. We are not waiving and have not waived any rights in relation to 009249 or any other request by verbally characterizing to EPA and DoJ counsel that -009249 was to protect us against EPA's current approach of not providing the responsive records we requested in 006937, but instead providing certain responsive information from those records.

For that latter reason there does not appear to be any pending or potential resolution, as in that call we suggested resolution was possible after reviewing exemplar responsive records; as you note this was two weeks ago, and we have received no such records, nor an assurance of receiving such records, but only demurrer. In fact, it is reasonable to conclude that EPA still will not produce responsive records (as identified in the "Invoice Nos" on the spreadsheet EPA provided excerpting certain responsive information from those records).

Regardless, this interpretation or response below is unilateral and in error, please do not cease processing that request, and we plan to continue operating on the relevant timetable in protecting our appellate rights as regards 009249 consistent with our request date.

If you have any questions please do not hesitate to contact me.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)

-----Original Message-----
From: Anderson, Cindy [mailto:anderson.cindy@epa.gov]

Sent: Wed 9/11/2013 2:37 PM
To: Chris Horner
Subject: FOIA request EPA-HQ-2013-009249

Mr. Horner -

I am writing in regard to the telephone conversation of August 29 between Mark Nebeker, Assistant U.S. Attorney, and you (to which I was also a party) about one of the pending FOIA lawsuits for which you serve as plaintiff's counsel.

After receiving information responsive to your earlier FOIA request for phone bills related to Gina McCarthy's use of text messages over a three-year period, you submitted an additional FOIA request, noted by number in the subject line above.

Based on the August 29 conversation, I understand that you intended the more recent FOIA request seeking "Certain Agency Records: Gina McCarthy Complete Phone/PDA bills, billing periods ending December 23, 2009, July 5, 2011" to be only "belt and suspenders" to assure that the organization you represent, Competitive Enterprise Institute, is sent the information that it continues to seek regarding billing for text messages related to Gina McCarthy's use of her EPA-issued mobile phone.

In these circumstances, I am writing now to let you know that processing of the more recent FOIA request regarding bills for Ms. McCarthy's text messages for two specified billing periods is now in abeyance, or tolled, pending potential resolution of the lawsuit related to the same information, that litigation being CEI v. EPA (13-1074, DDC).

I appreciate your acknowledging receipt of this message.

Cindy Anderson
EPA/OGC
(202) 564-2690

From:	Minoli, Kevin
To:	Garbow, Avi
Cc:	McDermott, Marna
Subject:	FOIA Request
Date:	Friday, April 26, 2013 3:32:29 PM
Attachments:	Request-for-Gina-McCarthy-Texts.pdf

Here it is. Kevin

Kevin S. Minoli
Acting Principal Deputy General Counsel
Office of General Counsel
Main Office Line: 202-564-8064
Direct Dial: 202-564-5551

From: Minoli, Kevin
To: Patrick, Monique
Subject: Fw: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)
Date: Monday, October 28, 2013 4:39:27 PM

Any chance I could meet with Avi at 915 on the same topic? Just me and him? Thanks.

Kevin S. Minoli
Acting Principal Associate General Counsel
Office of General Counsel
Main Line: 564-8064
Direct Dial: 564-5551

From: Minoli, Kevin
Sent: Monday, October 28, 2013 4:29:23 PM
To: Anderson, Cindy; Jones, Gail-R
Cc: Miller, Kevin; Patrick, Monique
Subject: Re: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

Gail is out today, but can we do 930?

Kevin S. Minoli
Acting Principal Associate General Counsel
Office of General Counsel
Main Line: 564-8064
Direct Dial: 564-5551

From: Anderson, Cindy
Sent: Monday, October 28, 2013 3:37:38 PM
To: Jones, Gail-R
Cc: Minoli, Kevin; Miller, Kevin
Subject: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

Gail –

Kevin Miller and I would like to talk with Kevin Minoli for about 15 minutes, possibly tomorrow morning before 10 am if he's available, but whenever.

It's about CEI FOIA lawsuit regarding text message billing for Gina McCarthy.

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From:	Nebeker, Mark (USADC)
To:	Anderson, Cindy
Subject:	FW: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Motion to Dismiss
Date:	Friday, December 27, 2013 1:53:10 PM
Attachments:	CEI_MTD.ord.pdf CEI_Final.mtd.pdf

Here's the motion filed today…

From: DCD_ECFNotice@dcd.uscourts.gov [mailto:DCD_ECFNotice@dcd.uscourts.gov]
Sent: Friday, December 27, 2013 1:51 PM
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Motion to Dismiss

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U.S. District Court

District of Columbia

Notice of Electronic Filing

The following transaction was entered by Nebeker, William on 12/27/2013 at 1:50 PM EDT and filed on 12/27/2013

Case Name:	COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Case Number:	1:13-cv-01074-RMC
Filer:	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Document Number:	12

Docket Text:
MOTION to Dismiss *Or, In The Alternative*, MOTION for Summary Judgment by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Attachments: # (1) Exhibit 1 (11/12/13 Email), # (2) Declaration Thomas Reilly, # (3) Exhibit Attachment A to Reilly Decl., # (4) Exhibit Attachment B to Reilly Decl, # (5) Exhibit Attachment C to Reilly Decl, # (6) Exhibit Attachment D to Reilly Decl, # (7) Exhibit Attachment E to Reilly Decl, # (8) Declaration Matthew Fritz, # (9)

Text of Proposed Order)(Nebeker, William)

1:13-cv-01074-RMC Notice has been electronically mailed to:

Hans Frank Bader hfb138@yahoo.com

William Mark Nebeker mark.nebeker@usdoj.gov, gunella.lilly@usdoj.gov, reginald.rowan@usdoj.gov

1:13-cv-01074-RMC Notice will be delivered by other means to::

The following document(s) are associated with this transaction:

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Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-0
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Document description: Exhibit 1 (11/12/13 Email)
Original filename:suppressed
Electronic document Stamp:
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Document description: Declaration Thomas Reilly
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-2
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Document description: Exhibit Attachment A to Reilly Decl.
Original filename:suppressed
Electronic document Stamp:
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Original filename:suppressed
Electronic document Stamp:
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Original filename:suppressed
Electronic document Stamp:
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Document description: Exhibit Attachment D to Reilly Decl
Original filename:suppressed
Electronic document Stamp:
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Document description: Exhibit Attachment E to Reilly Decl
Original filename:suppressed
Electronic document Stamp:
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Document description: Declaration Matthew Fritz
Original filename:suppressed
Electronic document Stamp:
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Document description: Text of Proposed Order
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-9
] [2dfa3419caa5c5b4ea478c345ad36994766a7e5751425ab4ed7a8e646ec349125e1
b594e0fab6534ade473268860cb75a23fcb03fec35218cc6d6e1660a62d3c]]

From:	Nebeker, Mark (USADC)
To:	Anderson, Cindy
Subject:	FW: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Answer to Complaint
Date:	Thursday, August 29, 2013 4:57:41 PM
Attachments:	CEI.ans.pdf

From: DCD_ECFNotice@dcd.uscourts.gov [mailto:DCD_ECFNotice@dcd.uscourts.gov]
Sent: Thursday, August 29, 2013 4:55 PM
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Answer to Complaint

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U.S. District Court

District of Columbia

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The following transaction was entered by Nebeker, William on 8/29/2013 at 4:54 PM and filed on 8/29/2013

Case Name:	COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Case Number:	1:13-cv-01074-RMC
Filer:	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Document Number:	6

Docket Text:
ANSWER to Complaint by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.(Nebeker, William)

1:13-cv-01074-RMC Notice has been electronically mailed to:

Hans Frank Bader hfb138@yahoo.com

William Mark Nebeker mark.nebeker@usdoj.gov, gunella.lilly@usdoj.gov,

reginald.rowan@usdoj.gov

1:13-cv-01074-RMC Notice will be delivered by other means to::

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=8/29/2013] [FileNumber=3750064-0]
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fcad389eb0f7698ae6306253a6fe30b2f415c10e8f6dad5ab38bcd9a0015]]

From:	Minoli, Kevin
To:	Kelly, Lynn; Albright, Scott; Miller, Kevin
Cc:	McDermott, Marna
Subject:	FW: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Motion to Dismiss
Date:	Thursday, January 02, 2014 10:50:00 AM
Attachments:	CEI_MTD.ord.pdf CEI_Final.mtd.pdf

Here is the brief in Cindy's case. Kevin

Kevin S. Minoli
Acting Principal Associate General Counsel
Office of General Counsel
Main Office Line: 202-564-8064
Direct Dial: 202-564-5551

From: Anderson, Cindy
Sent: Friday, December 27, 2013 4:15 PM
To: Nebeker, Mark (USADC)
Cc: Miller, Kevin; Minoli, Kevin
Subject: FW: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Motion to Dismiss

Thanks Mark, this is super!

esp. good to have "over and done" [at least for the time being] today; I really appreciate all your work - - over your *holiday* week, no less - - on this on behalf of EPA.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Nebeker, Mark (USADC) <Mark.Nebeker@usdoj.gov>
Sent: Friday, December 27, 2013 1:53 PM
To: Anderson, Cindy
Subject: FW: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Motion to Dismiss

Here's the motion filed today…

From: DCD_ECFNotice@dcd.uscourts.gov [mailto:DCD_ECFNotice@dcd.uscourts.gov]
Sent: Friday, December 27, 2013 1:51 PM
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Motion to Dismiss

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U.S. District Court
District of Columbia

Notice of Electronic Filing

The following transaction was entered by Nebeker, William on 12/27/2013 at 1:50 PM EDT and filed on 12/27/2013

Case Name:	COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Case Number:	1:13-cv-01074-RMC
Filer:	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Document Number:	12

Docket Text:

MOTION to Dismiss *Or, In The Alternative*, MOTION for Summary Judgment by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Attachments: # (1) Exhibit 1 (11/12/13 Email), # (2) Declaration Thomas Reilly, # (3) Exhibit Attachment A to Reilly Decl., # (4) Exhibit Attachment B to Reilly Decl, # (5) Exhibit Attachment C to Reilly Decl, # (6) Exhibit Attachment D to Reilly Decl, # (7) Exhibit Attachment E to Reilly Decl, # (8) Declaration Matthew Fritz, # (9) Text of Proposed Order)(Nebeker, William)

1:13-cv-01074-RMC Notice has been electronically mailed to:

Hans Frank Bader hfb138@yahoo.com

William Mark Nebeker mark.nebeker@usdoj.gov, gunella.lilly@usdoj.gov, reginald.rowan@usdoj.gov

1:13-cv-01074-RMC Notice will be delivered by other means to::

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-0] [3cba3b86592c1f7b57a11d2247d5495abcf5fc90115cfe714b127dd88b0fcfd3c34 e860a47092ba18213917eebf420cd1c1054e67417dbf02707f5041da1ec16]]
Document description: Exhibit 1 (11/12/13 Email)
Original filename:suppressed
Electronic document Stamp:

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Document description: Declaration Thomas Reilly
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-2
] [14591cc854b6a4c67743bc8bd18212eeff62e96e98d80144ecb06fedcac6a0fd357
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Document description: Exhibit Attachment A to Reilly Decl.
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-3
] [94c3c1cdcdd56384b5770164c2e85d0d84d45ee018d90e343de51e8f2035a60842c
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Document description: Exhibit Attachment B to Reilly Decl
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-4
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Original filename:suppressed
Electronic document Stamp:
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Original filename:suppressed
Electronic document Stamp:
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] [136d3c8d840b6e07523d48f205336b37ec00a26bfaee99315aef5d551e4f67c28d3
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Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-7
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Document description: Declaration Matthew Fritz
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-8
] [09d3f69a68d00c33785da8df67d7346402273afe8dd606855aac15bb0267a783a38
6c3eedd18bd56774592de06f30100a3a96e3b1a1236688b9cb2235b7f0ca1]]
Document description: Text of Proposed Order
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-9
] [2dfa3419caa5c5b4ea478c345ad36994766a7e5751425ab4ed7a8e646ec349125e1

b594e0fab6534ade473268860cb75a23fcb03fec35218cc6d6e1660a62d3c]]

From:	Anderson, Cindy
To:	Nebeker, Mark (USADC)
Cc:	Miller, Kevin; Minoli, Kevin
Subject:	FW: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Motion to Dismiss
Date:	Friday, December 27, 2013 4:15:18 PM
Attachments:	CEI_MTD.ord.pdf CEI_Final.mtd.pdf

Thanks Mark, this is super!

esp. good to have "over and done" [at least for the time being] today; I really appreciate all your work - - over your *holiday* week, no less - - on this on behalf of EPA.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Nebeker, Mark (USADC) <Mark.Nebeker@usdoj.gov>
Sent: Friday, December 27, 2013 1:53 PM
To: Anderson, Cindy
Subject: FW: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Motion to Dismiss

Here's the motion filed today…

From: DCD_ECFNotice@dcd.uscourts.gov [mailto:DCD_ECFNotice@dcd.uscourts.gov]
Sent: Friday, December 27, 2013 1:51 PM
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Motion to Dismiss

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court
District of Columbia

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Hans Frank Bader hfb138@yahoo.com

William Mark Nebeker mark.nebeker@usdoj.gov, gunella.lilly@usdoj.gov, reginald.rowan@usdoj.gov

1:13-cv-01074-RMC Notice will be delivered by other means to::

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-0] [3cba3b86592c1f7b57a11d2247d5495abcf5fc90115cfe714b127dd88b0fcfd3c34 e860a47092ba18213917eebf420cd1c1054e67417dbf02707f5041da1ec16]]
Document description: Exhibit 1 (11/12/13 Email)
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-1] [47b97bd058ee2d18abd1bd822a5cf6216ffe8ca6c4cccd2586cc84094bc49a098d3 60518ef9802f5c3f81620bfb06c1ce7971c832b0a5110339650f08987d6a3]]
Document description: Declaration Thomas Reilly
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-2] [14591cc854b6a4c67743bc8bd18212eeff62e96e98d80144ecb06fedcac6a0fd357 b6f607880ce244694b8814dd971d33fedace23057c6dd210b717b19384202]]
Document description: Exhibit Attachment A to Reilly Decl.
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-3] [94c3c1cdcdd56384b5770164c2e85d0d84d45ee018d90e343de51e8f2035a60842c 080c7968ffbf714e23608ede894932ee5b87a3b2e09d5efe95e0884a77e3b]]

Document description: Exhibit Attachment B to Reilly Decl
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-4
] [2b8e2ef7790ce8470fe61a7530342dfa294fc1f7535763e059a60daa5a396bbdf24
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Document description: Exhibit Attachment C to Reilly Decl
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-5
] [3a9053d2e3e8084a244475447f0da6d497516be6baa4c631845c019a247da106345
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Original filename:suppressed
Electronic document Stamp:
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] [136d3c8d840b6e07523d48f205336b37ec00a26bfaee99315aef5d551e4f67c28d3
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Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-7
] [20d352784675a7ae44b8e6c25e8fa5f9cf35a6d29f35fc96ce3e5f18f19c6d7dad4
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Document description: Declaration Matthew Fritz
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-8
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Document description: Text of Proposed Order
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Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=12/27/2013] [FileNumber=3867851-9
] [2dfa3419caa5c5b4ea478c345ad36994766a7e5751425ab4ed7a8e646ec349125e1
b594e0fab6534ade473268860cb75a23fcb03fec35218cc6d6e1660a62d3c]]

From:	Bruce, Barbara
To:	Miller, Kevin
Subject:	FW: Appeal of Initial Determination to Deny Fee Wavier, FOIA Request EPA-HQ-2013-006008
Date:	Wednesday, May 22, 2013 9:54:12 AM
Attachments:	CEI Appeal EPA Fee Waiver Denial McCarthy Texts.pdf

FYI – Horner appeal withdrawal

From: LindaE Green [mailto:Green.LindaE@epamail.epa.gov] **On Behalf Of** FOIA HQ
Sent: Wednesday, May 22, 2013 9:37 AM
To: Bruce, Barbara
Subject: Fw: Appeal of Initial Determination to Deny Fee Wavier, FOIA Request EPA-HQ-2013-006008

Barbara,

Below appears to be in connection with the appeal that has already been filed for this tracking number.

Linda

----- Forwarded by LindaE Green/DC/USEPA/US on 05/22/2013 09:34 AM -----

From: "Chris Horner" <CHorner@cei.org>
To: FOIA HQ@EPA
Date: 05/21/2013 11:13 AM
Subject: RE: Appeal of Initial Determination to Deny Fee Wavier, FOIA Request EPA-HQ-2013-006008

To EPA Appeals Office,

There has been some confusion regarding certain FOIA requests we submitted of late, including some transposed numbers on certain EPA correspondence which has been corrected. We brought this to EPA's attention and the errors corrected. Similarly, the attached appeal is moot and you may consider it withdrawn. The fees for 6005, which is the FOIA request number associated with the request for certain text messages of Gina McCarthy (not 6008), have been declared not billable.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.331.2260 (O)

-----Original Message-----
From: Chris Horner
Sent: Mon 5/13/2013 4:15 PM
To: hq foia@epa.gov
Subject: Appeal of Initial Determination to Deny Fee Wavier, FOIA Request EPA-HQ-2013-006008

To EPA FOIA Appeals Office,

Please see the above-cited appeal attached in PDF format. Please do not hesitate to contact me if you have any questions.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.331.2260 (M)

-----Original Message-----
From: Chris Horner
Sent: Fri 4/26/2013 11:59 AM
To: hq foia@epa.gov
Subject: RE: Request under the Freedom of Information Act -- Certain Agency Records (McCarthy text messages, specific dates)

To EPA's National FOIA Office,

To assist the process we have decided to provide specifics of what "text message" includes, but is not limited to, to ensure no otherwise responsive records are excluded from the Agency's review. Please see attached version of yesterday's request as so amended/clarified.

If you have any questions please do not hesitate to contact me.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)

-----Original Message-----
From: Chris Horner
Sent: Thu 4/25/2013 9:44 PM
To: hq foia@epa.gov
Subject: Request under the Freedom of Information Act -- Certain Agency Records (McCarthy text messages, specific dates)

To EPA's FOIA Office,

Please see the above-described request attached in PDF format. Please do not hesitate to contact me if you have any questions.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)

(See attached file: CEI Appeal EPA Fee Waiver Denial McCarthy Texts.pdf)

From:	Miller, Kevin
To:	Kelly, Lynn
Subject:	FW: Appeal of Initial Determination to Deny Fee Wavier, FOIA Request EPA-HQ-2013-006008
Date:	Wednesday, May 29, 2013 4:43:16 PM
Attachments:	CEI Appeal EPA Fee Waiver Denial McCarthy Texts.pdf

---

From: Bruce, Barbara
Sent: Wednesday, May 22, 2013 9:54 AM
To: Miller, Kevin
Subject: FW: Appeal of Initial Determination to Deny Fee Wavier, FOIA Request EPA-HQ-2013-006008

FYI – Horner appeal withdrawal

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Linda

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(See attached file: CEI Appeal EPA Fee Waiver Denial McCarthy Texts.pdf)

From: Kelly, Lynn
To: Anderson, Cindy; Albright, Scott; Hammitt, Jennifer; Nguyen, Quoc; Bennett, Karen
Subject: FW: case deadline format on reg review agenda
Date: Wednesday, October 30, 2013 4:51:48 PM

Next week please make sure to send case updates for the biweekly in the following format, per request from Marna (I bolded/red the format).

Lynn Kelly | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | WJC North, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-3266

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. If you are not the intended recipient, or believe you have received this communication in error, please delete the copy you received, and do not print, copy, retransmit, disseminate, or otherwise use the information. Thank you.

From: McDermott, Marna
Sent: Friday, October 25, 2013 2:07 PM
To: Miller, Kevin; Kelly, Lynn; Cooper, Geoff
Cc: Guerrero, David
Subject: case deadline format on reg review agenda

It would help the FO enormously if y'all could adopt the standard reg review format for your deadlines.

This looks like:

Date -- action -- case name -- summary of subj matter (attorney)

For example:

10/15/2013 Status Report due in *ATI v. EPA,* FOIA request regarding McCarthy Text messages (Hammit)

THANKS!!

Marna McDermott
Associate Deputy General Counsel
U.S. Environmental Protection Agency
(202) 564-2890

From: Ketcham-Colwill, Nancy
To: Minoli, Kevin; Reynolds, Thomas; Johnson, Alisha
Subject: FW: CEI asks for full McCarthy text records
Date: Monday, June 03, 2013 7:40:12 PM

Next requests . . .

From: POLITICO Pro Whiteboard [mailto:politicoemail@politicopro.com]
Sent: Monday, June 03, 2013 5:52 PM
To: Ketcham-Colwill, Nancy
Subject: CEI asks for full McCarthy text records

6/3/13 5:49 PM EDT

In response to a Freedom of Information Act request from the Competitive Enterprise Institute, EPA has denied that EPA air chief Gina McCarthy sent text messages on her agency phone during dates she was testifying before Congress, according to CEI attorney Chris Horner. The agency's response came just days after Horner filed a lawsuit in federal district court claiming the agency was dragging its feet on his FOIA request.

In response, Horner has filed two more FOIA requests. In one filed Friday, he asks for "copies of all EPA-related text messages sent or received by Assistant Administrator for Air and Radiation Gina McCarthy on her personal mobile telephone(s) or other personal data assistant(s) or personal digital assistant(s)…" and information about her use of personal phones for texting.

In another request filed Sunday, Horner asks for the agency to turn over, within 20 working days, "copies of all invoices or bills" associated with mobile phones or PDAs provided to McCarthy from July 1, 2009 to June 30, 2012. "Given that we are reliably informed that Ms. McCarthy was a frequent user of text messaging, it is a reasonable conclusion that EPA is not in fact maintaining and preserving these records as required by law and regulation. Alternatively, Ms. McCarthy is creating these records on a private device(s), which records we sought in a separate request dated March 31, 2013," the request says.

— *Erica Martinson*

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From: Minoli, Kevin
To: Garbow, Avi
Subject: Fw: CEI asks for full McCarthy text records
Date: Monday, June 03, 2013 8:06:17 PM

Kevin S. Minoli
Acting Principal Deputy General Counsel
Office of General Counsel
Main Line: 564-8064
Direct Dial: 564-5551

From: Ketcham-Colwill, Nancy
Sent: Monday, June 03, 2013 7:40:10 PM
To: Minoli, Kevin; Reynolds, Thomas; Johnson, Alisha
Subject: FW: CEI asks for full McCarthy text records

Next requests . . .

From: POLITICO Pro Whiteboard [mailto:politicoemail@politicopro.com]
Sent: Monday, June 03, 2013 5:52 PM
To: Ketcham-Colwill, Nancy
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6/3/13 5:49 PM EDT

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— *Erica Martinson*

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From: Johnson, Alisha
To: Minoli, Kevin
Subject: Fw: CEI sues to get McCarthy's phone bills
Date: Monday, July 15, 2013 1:37:17 PM

Link to the complaint here

From: POLITICO Pro Whiteboard <politicoemail@politicopro.com>
Sent: Monday, July 15, 2013 1:35:27 PM
To: Johnson, Alisha
Subject: CEI sues to get McCarthy's phone bills

7/15/13 1:33 PM EDT

The Competitive Enterprise Institute sued EPA today to get copies of phone bills for Gina McCarthy's EPA-issued PDA and records regarding her training on the agency's electronic records policies.

"McCarthy is specifically tasked with ensuring her office complies with these laws and policies, yet apparently not one of her text messages has ever been produced in response to Freedom of Information or congressional oversight requests for 'all records' or 'electronic records,'" CEI said in a statement.

The complaint, filed in D.C. District Court, comes after CEI filed Freedom of Information Act requests for text messages from McCarthy's phone from 18 specific dates when she was testifying before Congress and the group was told there were no relevant records. The group wants the phone bills to prove whether she has text message capabilities. The group is also asking the agency for work-related text messages from McCarthy's personal mobile phone.

"If these bills show that any text messages were in fact sent or received on the EPA device on any of the 18 dates in question, that means EPA is either not turning over records it has been ordered by courts to produce or is destroying those records in violation of the law," said Horner.

"Our suit seeks to help draw EPA out into the open on these important issues and determine whether the reason these records are not being produced is mere nose-thumbing at the public and Congress, or possibly involves Title 18. [Title 18 of the United States Code, the criminal code of federal law, prohibits the destruction of federal records.]"

-- *Erica Martinson*

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From:	Anderson, Cindy
To:	mark.nebeker@usdoj.gov; Weinstock, Larry
Subject:	FW: CEI v. EPA (13-1074) responsive documents for billing/text messages
Importance:	High

When: Monday, August 26, 2013 4:00 PM-4:30 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Cindy will call each of you to conference in on one line

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*~*

Mark –

Just want to make sure you received this change to time of our call later today.

Larry Weinstock was not available at 3pm today; let me know if 4pm is not good for you and we'll look for another time today to discuss the document provided in response to CEI's request for billing records for Gina McCarthy's text messages.

Thanks –

Cindy
564-2690

-----Original Appointment-----
From: Anderson, Cindy
Sent: Friday, August 23, 2013 4:26 PM
To: Anderson, Cindy; Weinstock, Larry; mark.nebeker@usdoj.gov <mailto:mark.nebeker@usdoj.gov>
Subject: CEI v. EPA (13-1074) responsive documents for billing/text messages
When: Monday, August 26, 2013 4:00 PM-4:30 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Cindy will call each of you to conference in on one line

Mark, sorry, I needed to change time. Hope this works for you as well. If not, please feel free to suggest alternate time.
Thanks!
cindy

From:	Kelly, Lynn
To:	Anderson, Cindy
Subject:	FW: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC
Date:	Thursday, October 17, 2013 4:02:50 PM
Attachments:	CourtLink_Dockets_US-DIS-DCD_1_13cv1532_541927_10.17.2013_103507115.html CourtLink_Document_US-DIS-DCD_1_13cv1532_Idx_541927_10.17.2013_103507958.pdf

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Lynn Kelly | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | WJC North, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-3266
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-----Original Message-----
From: Miller, Kevin
Sent: Thursday, October 17, 2013 10:46 AM
To: Kelly, Lynn
Subject: FW: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

Kevin Miller | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | WJC North, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-2691

-----Original Message-----
From: Grady, Mary
Sent: Thursday, October 17, 2013 10:40 AM
To: Miller, Kevin; Albright, Scott
Subject: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

You probably already have this compliant, but just in case... Mary

From:	Miller, Kevin
To:	Schulson, Daniel
Subject:	FW: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC
Date:	Thursday, October 17, 2013 11:30:00 AM
Attachments:	CourtLink_Dockets_US-DIS-DCD_1_13cv1532_541927_10.17.2013_103507115.html CourtLink_Document_US-DIS-DCD_1_13cv1532_Idx_541927_10.17.2013_103507958.pdf

---

Kevin Miller | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | WJC North, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-2691

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Sent: Thursday, October 17, 2013 10:40 AM
To: Miller, Kevin; Albright, Scott
Subject: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

You probably already have this compliant, but just in case... Mary

From:	Miller, Kevin
To:	Kelly, Lynn
Subject:	FW: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC
Date:	Thursday, October 17, 2013 10:45:00 AM
Attachments:	CourtLink_Dockets_US-DIS-DCD_1_13cv1532_541927_10.17.2013_103507115.html CourtLink_Document_US-DIS-DCD_1_13cv1532_Idx_541927_10.17.2013_103507958.pdf

---

Kevin Miller | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | WJC North, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-2691

-----Original Message-----
From: Grady, Mary
Sent: Thursday, October 17, 2013 10:40 AM
To: Miller, Kevin; Albright, Scott
Subject: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

You probably already have this compliant, but just in case... Mary

From:	Miller, Kevin
To:	Kelly, Lynn
Subject:	FW: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1074 D. DC
Date:	Monday, July 15, 2013 1:16:36 PM
Attachments:	CourtLink_Dockets_US-DIS-DCD_1_13cv1074_541927_7.15.2013_130805728.html CourtLink_Document_US-DIS-DCD_1_13cv1074_Idx_541927_7.15.2013_130806666.pdf

---

Kevin Miller | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | ARN, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-2691

-----Original Message-----
From: Grady, Mary
Sent: Monday, July 15, 2013 1:11 PM
To: Miller, Kevin
Subject: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1074 D. DC

From:	Kelly, Lynn
To:	Anderson, Cindy
Cc:	Weinstock, Larry; Miller, Kevin
Subject:	FW: Competitive Enterprise Institute v. United States Environmental Protection Agency, US DIS DCD 1:14cv582
Date:	Wednesday, April 09, 2014 12:10:57 PM
Attachments:	Courtlink_Docket_US_DIS_DCD_1.14cv582_04.09.2014.htm Courtlink_Document_US_DIS_DCD_1.14cv582_04.09.2014_.pdf

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FYI

Lynn Kelly | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | WJC North, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-3266

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From: Turley, Jennifer
Sent: Wednesday, April 09, 2014 12:06 PM
To: Miller, Kevin; Kelly, Lynn
Subject: Competitive Enterprise Institute v. United States Environmental Protection Agency, US DIS DCD 1:14cv582

From:	Wachter, Eric
To:	Kelly, Lynn
Subject:	FW: EPA-HQ-2013-006008 Final Response (AO Second)
Date:	Wednesday, January 29, 2014 4:06:52 PM
Attachments:	CEI response to EPA Wachter re 2013-006008.pdf EPA-HQ-2013-006008.second.response.final.pdf

---

From: Newton, Jonathan
Sent: Monday, January 27, 2014 8:42 AM
To: Wachter, Eric; Hope, Brian
Subject: FW: EPA-HQ-2013-006008 Final Response (AO Second)

Jonathan V. Newton, Attorney-Advisor
U.S. EPA, Office of the Executive Secretariat
1200 Pennsylvania Avenue, NW (MC 1105A)
Washington, D.C. 20460
(202) 566-1981

From: Christopher Horner [mailto:chris.horner@cei.org]
Sent: Friday, January 24, 2014 8:57 PM
To: hq.foia@epa.gov; Newton, Jonathan
Subject: Re: EPA-HQ-2013-006008 Final Response (AO Second)

Please see the attached reply.

On 1/23/14, 6:11 PM, "hq.foia@epa.gov" <hq.foia@epa.gov> wrote:

01/23/2014 06:09 PM
FOIA Request: EPA-HQ-2013-006008

From:	Kelly, Lynn
To:	Miller, Kevin
Subject:	FW: EPA-HQ-2013-006008 Final Response (AO Second)
Date:	Thursday, January 30, 2014 3:23:18 PM
Attachments:	CEI response to EPA Wachter re 2013-006008.pdf EPA-HQ-2013-006008.second.response.final.pdf

---

FYI only I think, but we may want to discuss tomorrow.

Lynn Kelly | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | WJC North, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-3266

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From: Wachter, Eric
Sent: Wednesday, January 29, 2014 4:07 PM
To: Kelly, Lynn
Subject: FW: EPA-HQ-2013-006008 Final Response (AO Second)

From: Newton, Jonathan
Sent: Monday, January 27, 2014 8:42 AM
To: Wachter, Eric; Hope, Brian
Subject: FW: EPA-HQ-2013-006008 Final Response (AO Second)

Jonathan V. Newton, Attorney-Advisor
U.S. EPA, Office of the Executive Secretariat
1200 Pennsylvania Avenue, NW (MC 1105A)
Washington, D.C. 20460
(202) 566-1981

From: Christopher Horner [mailto:chris.horner@cei.org]
Sent: Friday, January 24, 2014 8:57 PM
To: hq.foia@epa.gov; Newton, Jonathan
Subject: Re: EPA-HQ-2013-006008 Final Response (AO Second)

Please see the attached reply.

On 1/23/14, 6:11 PM, "hq.foia@epa.gov" <hq.foia@epa.gov> wrote:

01/23/2014 06:09 PM
FOIA Request: EPA-HQ-2013-006008

From:	Miller, Kevin
To:	McDermott, Marna; Kelly, Lynn
Cc:	Nguyen, Quoc; Ketcham-Colwill, Nancy
Subject:	FW: FOIA Request ? Certain Agency Records: Gina McCarthy Text Messages, billing periods ending December 23, 2009 and July 5, 2011
Date:	Wednesday, August 07, 2013 2:56:54 PM
Attachments:	CEI EPA McCarthy Text Message FOIA III.pdf 202-596-0247 - Text bill - Jul 09-Jun 12.pdf

---

All,

There is a new FOIA related to Gina McCarthy text messages from CEI that just came in. Best regards.

Kevin

Kevin Miller | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | ARN, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-2691

From: LindaE Green [mailto:Green.LindaE@epamail.epa.gov] **On Behalf Of** FOIA HQ
Sent: Wednesday, August 07, 2013 2:15 PM
To: Miller, Kevin
Cc: Warden, Vivian
Subject: Fw: FOIA Request ? Certain Agency Records: Gina McCarthy Text Messages, billing periods ending December 23, 2009 and July 5, 2011

Kevin,

The below request has been processed and the tracking number is EPA=HQ-2013-008908.

Linda E. Green
Office of Environmental Information
U.S. Environmental Protection Agency
(202) 566-1667
email: green.lindae@epa.gov

----- Forwarded by LindaE Green/DC/USEPA/US on 08/07/2013 02:12 PM -----

From: "Chris Horner" <CHorner@cei.org>
To: FOIA HQ@EPA
Date: 08/06/2013 05:29 PM
Subject: FOIA Request ? Certain Agency Records: Gina McCarthy Text Messages, billing periods ending December 23, 2009 and July 5, 2011

To EPA's FOIA Office,

Please see the above-described request attached in PDF format. Also attached is the EPA record referenced therein,

purporting to show texting activity on Ms. McCarthy's EPA-issued phone/PDA.

Please do not hesitate to contact me if you have any questions.

Best,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)*(See attached file: CEI EPA McCarthy Text Message FOIA III.pdf)*
(See attached file: 202-596-0247 - Text bill - Jul 09-Jun 12.pdf)

From: Anderson, Cindy
To: mark.nebeker@usdoj.gov
Subject: FW: FOIA request EPA-HQ-2013-009249
Date: Wednesday, September 11, 2013 4:44:00 PM

FYI -

Cindy
564-2690

From: Anderson, Cindy
Sent: Wednesday, September 11, 2013 4:43 PM
To: 'Chris Horner'
Subject: RE: FOIA request EPA-HQ-2013-009249

Mr. Horner –

I understand from your response that you remain interested in the information that you requested that is now assigned the number EPA-HQ-2013-009249.

Processing of that particular request will continue unabated, without any tolling at this time, based on your representations below.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Chris Horner [mailto:CHorner@cei.org]
Sent: Wednesday, September 11, 2013 2:50 PM
To: Anderson, Cindy
Subject: RE: FOIA request EPA-HQ-2013-009249

Dear Ms. Anderson,

We are not aware of any progress in the litigation you refer to, as discussed, below. We are not waiving and have not waived any rights in relation to 009249 or any other request by verbally characterizing to EPA and DoJ counsel that -009249 was to protect us against EPA's current approach of not providing the responsive records we requested in 006937, but instead providing certain responsive information from those records.

For that latter reason there does not appear to be any pending or potential resolution, as in that call we suggested resolution was possible after reviewing exemplar responsive records; as you note this was two weeks ago, and we have received no such records, nor an assurance of receiving such records, but only demurrer. In fact, it is reasonable to conclude that EPA still will not produce responsive records (as identified in the "Invoice Nos" on the spreadsheet EPA provided excerpting certain responsive information from those records).

Regardless, this interpretation or response below is unilateral and in error, please do not cease processing that request, and we plan to continue operating on the relevant timetable in protecting our appellate rights as regards 009249 consistent with our request date.

If you have any questions please do not hesitate to contact me.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)

-----Original Message-----
From: Anderson, Cindy [mailto:anderson.cindy@epa.gov]
Sent: Wed 9/11/2013 2:37 PM
To: Chris Horner
Subject: FOIA request EPA-HQ-2013-009249

Mr. Horner -

I am writing in regard to the telephone conversation of August 29 between Mark Nebeker, Assistant U.S. Attorney, and you (to which I was also a party) about one of the pending FOIA lawsuits for which you serve as plaintiff's counsel.

After receiving information responsive to your earlier FOIA request for phone bills related to Gina McCarthy's use of text messages over a three-year period, you submitted an additional FOIA request, noted by number in the subject line above.

Based on the August 29 conversation, I understand that you intended the more recent FOIA request seeking "Certain Agency Records: Gina McCarthy Complete Phone/PDA bills, billing periods ending December 23, 2009, July 5, 2011" to be only "belt and suspenders" to assure that the organization you represent, Competitive Enterprise Institute, is sent the information that it continues to seek regarding billing for text messages related to Gina McCarthy's use of her EPA-issued mobile phone.

In these circumstances, I am writing now to let you know that processing of the more recent FOIA request regarding bills for Ms. McCarthy's text messages for two specified billing periods is now in abeyance, or tolled, pending potential resolution of the lawsuit related to the same information, that litigation being CEI v. EPA (13-1074, DDC).

I appreciate your acknowledging receipt of this message.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Vivian Warden on behalf of FOIA HQ
To: Kelly, Lynn
Subject: Fw: FW Determination
Date: Tuesday, May 14, 2013 10:34:34 AM

This is being forwarded to you per Larry Gottesman.

Office of Environmental Information
U.S. Environmental Protection Agency
(202) 566-1667

----- Forwarded by Vivian Warden/DC/USEPA/US on 05/14/2013 10:33 AM -----

From: "Chris Horner" <CHorner@cei.org>
To: Monica Lewis/DC/USEPA/US@MSO365, FOIA HQ@EPA, <foia@erulemaking.net>
Date: 05/11/2013 11:39 AM
Subject: RE: FW Determination

To EPA FOIA Staff,

Please note the the following and inform us of the correction taken.

At 8:10 pm on May 9, 2013, lewis.monica@epa.gov sent an email (below) citing FOIA request EPA-HQ-2013-006005, stating that this request, regarding certain text messages sent to or from Gina McCarthy, was not billable. It attached a determination letter, referring to the McCarthy/text FOIA request and referencing -006005.

As is customary for EPA in this instance, it sent a corresponding email stating that this determination had been reached.

Specifically, at 8:11 pm on May 9, 2013, foia@erulemaking.net sent an email stating the following:

Subject: FOIA Fee Waiver Disposition Reached for EPA-HQ-2013-006005

Your request for Fee Waiver for the FOIA request EPA-HQ-2013-006005 has been determined to be not applicable as the request is not billable. Additional details for this request are as follows:

Request Created on: 05/01/2013
Request Long Description: Requesting certain agency records regarding “Battelle”, “AAPCA”.

As you can see, the "AAPCA/Battelle" description of the FOIA request does not match that in the letter EPA sent contemporaneously. Further, the actual AAPCA/Battelle FOIA request (which has not been assigned a request number) was neither submitted from this email address nor on behalf of CEI. It was submitted on behalf of the American Tradition Institute, from a different email address than EPA is using to, possibly, correspond about that request (if citing the wrong FOIA request number; or, to correspond about the McCarthy/text request, if using the wrong description, requesting party and email address).

Please correct whatever this error is and inform me of the correction so I can keep our records straight regarding EPA's correspondence.

Thank you in advance.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.331.2260 (O)

-----Original Message-----
From: lewis monica@epa.gov [mailto:lewis.monica@epa.gov]
Sent: Thu 5/9/2013 8:10 PM
To: Chris Horner
Subject: FW Determination

05/09/2013 08:10 PM
FOIA Request: EPA-HQ-2013-006005

From: Kelly, Lynn
To: Miller, Kevin
Subject: FW: FW Determination
Date: Tuesday, May 14, 2013 5:30:00 PM

FYI – Vivian called and left me a voicemail about this, but I haven't connected. It seems there is a new appeal but I can't track down from which request it is – I think it may be of an ATI request.

From: Vivian Warden [mailto:Warden.Vivian@epamail.epa.gov] **On Behalf Of** FOIA HQ
Sent: Tuesday, May 14, 2013 10:34 AM
To: Kelly, Lynn
Subject: Fw: FW Determination

This is being forwarded to you per Larry Gottesman.

Office of Environmental Information
U.S. Environmental Protection Agency
(202) 566-1667

----- Forwarded by Vivian Warden/DC/USEPA/US on 05/14/2013 10:33 AM -----

From: "Chris Horner" <CHorner@cei.org>
To: Monica Lewis/DC/USEPA/US@MSO365, FOIA HQ@EPA, <foia@erulemaking.net>
Date: 05/11/2013 11:39 AM
Subject: RE: FW Determination

To EPA FOIA Staff,

Please note the the following and inform us of the correction taken.

At 8:10 pm on May 9, 2013, lewis.monica@epa.gov sent an email (below) citing FOIA request EPA-HQ-2013-006005, stating that this request, regarding certain text messages sent to or from Gina McCarthy, was not billable. It attached a determination letter, referring to the McCarthy/text FOIA request and referencing -006005.

As is customary for EPA in this instance, it sent a corresponding email stating that this determination had been reached.

Specifically, at 8:11 pm on May 9, 2013, foia@erulemaking.net sent an email stating the following:

Subject: FOIA Fee Waiver Disposition Reached for EPA-HQ-2013-006005

Your request for Fee Waiver for the FOIA request EPA-HQ-2013-006005 has been determined to be not applicable as the request is not billable. Additional details for this request are as follows:

Request Created on: 05/01/2013
Request Long Description: Requesting certain agency records regarding "Battelle", "AAPCA".

As you can see, the "AAPCA/Battelle" description of the FOIA request does not match that in the letter EPA sent

contemporaneously. Further, the actual AAPCA/Battelle FOIA request (which has not been assigned a request number) was neither submitted from this email address nor on behalf of CEI. It was submitted on behalf of the American Tradition Institute, from a different email address than EPA is using to, possibly, correspond about that request (if citing the wrong FOIA request number; or, to correspond about the McCarthy/text request, if using the wrong description, requesting party and email address).

Please correct whatever this error is and inform me of the correction so I can keep our records straight regarding EPA's correspondence.

Thank you in advance.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.331.2260 (O)

-----Original Message-----
From: lewis monica@epa.gov [mailto:lewis.monica@epa.gov]
Sent: Thu 5/9/2013 8:10 PM
To: Chris Horner
Subject: FW Determination

05/09/2013 08:10 PM
FOIA Request: EPA-HQ-2013-006005

From: Miller, Kevin
To: Minoli, Kevin
Subject: FW: Greenwire: Conservative group sues to obtain McCarthy text messages
Date: Wednesday, May 29, 2013 4:20:00 PM

From: Grady, Mary
Sent: Wednesday, May 29, 2013 4:17 PM
To: Albright, Scott; Anderson, Cindy; Hammitt, Jennifer; Kelly, Lynn; Margolis, Alan; Miller, Kevin; Nguyen, Quoc; Schulson, Daniel
Subject: Greenwire: Conservative group sues to obtain McCarthy text messages

EPA:

Conservative group sues to obtain McCarthy text messages

Emily Yehle, E&E reporter

Published: Wednesday, May 29, 2013

The Competitive Enterprise Institute filed a Freedom of Information Act lawsuit today demanding that U.S. EPA turn over air chief Gina McCarthy's text messages.

McCarthy, President Obama's pick to head EPA, sent text messages to staff on an agency-issued PDA, according to the lawsuit. CEI wants the messages from the days McCarthy testified in front of congressional committees.

The lawsuit comes as McCarthy's nomination sits in the Senate, where Sen. Roy Blunt (R-Mo.) has placed it on hold to force EPA and other agencies to set a timeline for a draft environmental impact statement on a controversial project in his state (*E&ENews PM*, May 23).

In a complaint filed today with the U.S. District Court for the District of Columbia, CEI claims McCarthy regularly used text messaging for work correspondence. The group also claims that a "senior agency official" warned her against texting about lawmakers, especially on days where she testified in the House and Senate.

The group says it filed the lawsuit when EPA declined to hand over the texts for 18 specific dates through the FOIA process.

"EPA must produce these records under the Freedom of Information Act and, in the process, admit one of two scenarios: Either EPA has maintained text messages as required by law but has chosen repeatedly to withhold them ... or EPA has destroyed the texts, with possible criminal penalties," the conservative group said in a news release.

The isn't the first FOIA lawsuit CEI has filed in an attempt to get electronic correspondence. Last month, CEI joined the American Tradition Institute in seeking instant-message conversations for three top current and former EPA officials, including McCarthy. The groups withdrew the suit after an "atypically specific response" in which EPA asserted no such records existed (*E&ENews PM*, April 25).

CEI's involvement in that suit was spearheaded by senior fellow Christopher Horner, who last year uncovered EPA's practice of assigning alternative email accounts to agency administrators. That practice has also sparked concern from Capitol Hill and outside watchdog groups about whether such addresses

violate the Federal Records Act.

[Note: the complaint has been sent to Kevin Miller.]

Mary Grady, Law Librarian
U.s. Environmental Protection Agency
Office of General Counsel
202/564-3972
grady.mary@epa.gov

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From: Anderson, Cindy
To: Schmitt, Addy (USADC); Lo, Michelle (USADC)
Subject: FW: Greenwire: Conservative group sues to obtain McCarthy text messages
Date: Wednesday, May 29, 2013 4:19:00 PM

FYI –

From: Grady, Mary
Sent: Wednesday, May 29, 2013 4:17 PM
To: Albright, Scott; Anderson, Cindy; Hammitt, Jennifer; Kelly, Lynn; Margolis, Alan; Miller, Kevin; Nguyen, Quoc; Schulson, Daniel
Subject: Greenwire: Conservative group sues to obtain McCarthy text messages

EPA:

Conservative group sues to obtain McCarthy text messages

Emily Yehle, E&E reporter

Published: Wednesday, May 29, 2013

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violate the Federal Records Act.

[Note: the complaint has been sent to Kevin Miller.]

Mary Grady, Law Librarian
U.s. Environmental Protection Agency
Office of General Counsel
202/564-3972
grady.mary@epa.gov

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From: Minoli, Kevin
To: Reynolds, Thomas; Rivas-Vazquez, Victoria; Smith, Roxanne
Cc: Miller, Kevin
Subject: FW: Greenwire: Conservative group sues to obtain McCarthy text messages
Date: Wednesday, May 29, 2013 4:49:00 PM

Hi Folks- Feel free to call me or Kevin Miller if you want any background on this new case. Thanks, Kevin

Kevin S. Minoli
Acting Principal Deputy General Counsel
Office of General Counsel
Main Office Line: 202-564-8064
Direct Dial: 202-564-5551

From: Miller, Kevin
Sent: Wednesday, May 29, 2013 4:21 PM
To: Minoli, Kevin
Subject: FW: Greenwire: Conservative group sues to obtain McCarthy text messages

---

From: Grady, Mary
Sent: Wednesday, May 29, 2013 4:17 PM
To: Albright, Scott; Anderson, Cindy; Hammitt, Jennifer; Kelly, Lynn; Margolis, Alan; Miller, Kevin; Nguyen, Quoc; Schulson, Daniel
Subject: Greenwire: Conservative group sues to obtain McCarthy text messages

EPA:

Conservative group sues to obtain McCarthy text messages

Emily Yehle, E&E reporter

Published: Wednesday, May 29, 2013

The Competitive Enterprise Institute filed a Freedom of Information Act lawsuit today demanding that U.S. EPA turn over air chief Gina McCarthy's text messages.

McCarthy, President Obama's pick to head EPA, sent text messages to staff on an agency-issued PDA, according to the lawsuit. CEI wants the messages from the days McCarthy testified in front of congressional committees.

The lawsuit comes as McCarthy's nomination sits in the Senate, where Sen. Roy Blunt (R-Mo.) has placed it on hold to force EPA and other agencies to set a timeline for a draft environmental impact statement on a controversial project in his state (*E&ENews PM*, May 23).

In a complaint filed today with the U.S. District Court for the District of Columbia, CEI claims McCarthy regularly used text messaging for work correspondence. The group also claims that a "senior agency official" warned her against texting about lawmakers, especially on days where she testified in the House and Senate.

The group says it filed the lawsuit when EPA declined to hand over the texts for 18 specific dates through the FOIA process.

"EPA must produce these records under the Freedom of Information Act and, in the process, admit one of two scenarios: Either EPA has maintained text messages as required by law but has chosen repeatedly to withhold them ... or EPA has destroyed the texts, with possible criminal penalties," the conservative group said in a news release.

The isn't the first FOIA lawsuit CEI has filed in an attempt to get electronic correspondence. Last month, CEI joined the American Tradition Institute in seeking instant-message conversations for three top current and former EPA officials, including McCarthy. The groups withdrew the suit after an "atypically specific response" in which EPA asserted no such records existed (*E&ENews PM*, April 25).

CEI's involvement in that suit was spearheaded by senior fellow Christopher Horner, who last year uncovered EPA's practice of assigning alternative email accounts to agency administrators. That practice has also sparked concern from Capitol Hill and outside watchdog groups about whether such addresses violate the Federal Records Act.

[Note: the complaint has been sent to Kevin Miller.]

Mary Grady, Law Librarian
U.s. Environmental Protection Agency
Office of General Counsel
202/564-3972
grady.mary@epa.gov

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http://www.surveymonkey.com/s/epalibsurvey

From:	Miller, Kevin
To:	Kelly, Lynn
Subject:	FW: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC
Date:	Wednesday, May 29, 2013 3:03:35 PM
Attachments:	CourtLink_Dockets_US-DIS-DCD_1_13cv779_541927_5.29.2013_145917720.html CourtLink_Document_US-DIS-DCD_1_13cv779_Idx_541927_5.29.2013_145918783.pdf
Importance:	High

Any idea who is working on this one (from program)?

-----Original Message-----
From: Grady, Mary
Sent: Wednesday, May 29, 2013 3:02 PM
To: Miller, Kevin; Cooper, Geoff
Subject: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC
Importance: High

From:	Vivian Warden on behalf of FOIA HQ
To:	Kelly, Lynn
Subject:	Fw: Request under the Freedom of Information Act -- Certain Agency Records (McCarthy text messages, specific dates)
Date:	Thursday, May 30, 2013 11:03:34 AM
Attachments:	CEI EPA McCarthy Text Message FOIA I.pdf

Linda E. Green
Office of Environmental Information
U.S. Environmental Protection Agency
(202) 566-1667
email: green.lindae@epa.gov

----- Forwarded by Vivian Warden/DC/USEPA/US on 05/30/2013 10:43 AM -----

From: "Chris Horner" <CHorner@cei.org>
To: FOIA HQ@EPA
Date: 04/25/2013 09:44 PM
Subject: Request under the Freedom of Information Act -- Certain Agency Records (McCarthy text messages, specific dates)

To EPA's FOIA Office,

Please see the above-described request attached in PDF format. Please do not hesitate to contact me if you have any questions.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)*(See attached file: CEI EPA McCarthy Text Message FOIA I.pdf)*

From:	Vivian Warden on behalf of FOIA HQ
To:	Kelly, Lynn
Subject:	Fw: Request under the Freedom of Information Act -- Certain Agency Records (McCarthy text messages, specific dates)
Date:	Thursday, May 30, 2013 11:03:32 AM
Attachments:	CEI EPA McCarthy Text Message FOIA II.pdf

Linda E. Green
Office of Environmental Information
U.S. Environmental Protection Agency
(202) 566-1667
email: green.lindae@epa.gov

----- Forwarded by Vivian Warden/DC/USEPA/US on 05/30/2013 10:43 AM -----

From: "Chris Horner" <CHorner@cei.org>
To: FOIA HQ@EPA
Date: 04/26/2013 12:03 PM
Subject: RE: Request under the Freedom of Information Act -- Certain Agency Records (McCarthy text messages, specific dates)

To EPA's National FOIA Office,

To assist the process we have decided to provide specifics of what "text message" includes, but is not limited to, to ensure no otherwise responsive records are excluded from the Agency's review. Please see attached version of yesterday's request as so amended/clarified.

If you have any questions please do not hesitate to contact me.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)

-----Original Message-----
From: Chris Horner
Sent: Thu 4/25/2013 9:44 PM
To: hq foia@epa.gov
Subject: Request under the Freedom of Information Act -- Certain Agency Records (McCarthy text messages, specific dates)

To EPA's FOIA Office,

Please see the above-described request attached in PDF format. Please do not hesitate to contact me if you have any questions.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)

(See attached file: CEI EPA McCarthy Text Message FOIA II.pdf)

From:	Vivian Warden on behalf of FOIA HQ
To:	Kelly, Lynn
Subject:	Fw: Request under the Freedom of Information Act – Certain Agency Records re: "Battelle", "AAPCA"
Date:	Thursday, May 30, 2013 11:03:14 AM
Attachments:	ATI EPA Battelle FOI Request.pdf

Linda E. Green
Office of Environmental Information
U.S. Environmental Protection Agency
(202) 566-1667
email: green.lindae@epa.gov

----- Forwarded by Vivian Warden/DC/USEPA/US on 05/30/2013 10:49 AM -----

From: Chris Horner <chornerlaw@aol.com>
To: FOIA HQ@EPA
Date: 04/25/2013 10:32 AM
Subject: Request under the Freedom of Information Act – Certain Agency Records re: "Battelle", "AAPCA"

To EPA HQ FOIA Office,

Please see the request under the Freedom of Information Act attached in PDF format. If you have any questions please do not hesitate to contact me.

Yours,
Chris Horner
American Tradition Institute

****
The information contained in this message may be privileged. This transmission is therefore intended by the sender to be confidential and intended only for the proper recipient. If you are not the intended recipient distribution of this message is prohibited.*(See attached file: ATI EPA Battelle FOI Request.pdf)*

From:	Miller, Kevin
To:	Anderson, Cindy
Subject:	FW: Request under the Freedom of Information Act – Certain Agency Records re: "Battelle", "AAPCA"
Date:	Wednesday, May 01, 2013 12:16:47 PM
Attachments:	ATI EPA Battelle FOI Request.pdf

Pretty sure this is the one you mentioned --

From: Gottesman, Larry
Sent: Wednesday, May 01, 2013 12:11 PM
To: Miller, Kevin
Subject: FW: Request under the Freedom of Information Act – Certain Agency Records re: "Battelle", "AAPCA"

From: LindaE Green [mailto:Green.LindaE@epamail.epa.gov] **On Behalf Of** FOIA HQ
Sent: Wednesday, May 01, 2013 11:57 AM
To: Gottesman, Larry
Subject: Fw: Request under the Freedom of Information Act – Certain Agency Records re: "Battelle", "AAPCA"

Larry,

The below request has been assigned tracking number EPA-HQ-2013-006005.

Linda

----- Forwarded by LindaE Green/DC/USEPA/US on 05/01/2013 11:54 AM -----

From: Chris Horner <chornerlaw@aol.com>
To: FOIA HQ@EPA
Date: 04/25/2013 10:32 AM
Subject: Request under the Freedom of Information Act – Certain Agency Records re: "Battelle", "AAPCA"

To EPA HQ FOIA Office,

Please see the request under the Freedom of Information Act attached in PDF format. If you have any questions please do not hesitate to contact me.

Yours,
Chris Horner
American Tradition Institute

****
The information contained in this message may be privileged. This transmission is therefore intended by the sender to be confidential and intended only for the proper recipient. If you are not the intended recipient distribution of this message is prohibited.*(See attached file: ATI EPA Battelle FOI Request.pdf)*

From:	LindaE Green on behalf of FOIA HQ
To:	Kelly, Lynn
Cc:	Gottesman, Larry
Subject:	Fw: Request under the Freedom of Information Act – Certain Agency Records re: "Battelle", "AAPCA"
Date:	Friday, May 31, 2013 11:36:03 AM
Attachments:	ATI_EPA_Battelle_FOI_Request.pdf Horner_Ack_Ltr-8.pages

---

Lynn,

Email 2 from Chris Horner, per our discussion. Thanks for looking into this.

----- Forwarded by LindaE Green/DC/USEPA/US on 05/31/2013 11:18 AM -----

From: Chris Horner <chornerlaw@aol.com>
To: FOIA HQ@EPA
Date: 05/30/2013 07:59 PM
Subject: Fwd: Request under the Freedom of Information Act – Certain Agency Records re: "Battelle", "AAPCA"

To EPA's FOIA Office,

Although there is no detail other than the request date of April 25, 2013 in EPA's below-referenced letter (attached), I believe an error has been made regarding that request which EPA sent an acknowledgement letter to my attention at the Competitive Enterprise Institute (assigned number 2013-006858). I request EPA confirm, clarify or correct that this letter refers to a request sent on behalf of the American Tradition Institute (attached), not CEI, from this email address, not @CEI.org.

Below EPA's email to the @CEI.org address, reproduced immediately below, is the text of my original email transmitting the request.

I look forward to your response.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 ++1.202.262.4458 (M)

****
The information contained in this message may be privileged. This transmission is therefore intended by the sender to be confidential and intended only for the proper recipient. If you are not the intended recipient distribution of this message is prohibited.

-----Original Message-----
From: hq.foia@epa.gov [mailto:hq.foia@epa.gov]
Sent: Thu 5/30/2013 1:28 PM
To: Chris Horner
Subject: Acknowledgement Letter

05/30/2013 01:27 PM
FOIA Request: EPA-HQ-2013-006858

See attached document.

-----Original Message-----
From: Chris Horner <chornerlaw@aol.com>
To: hq.foia <hq.foia@epa.gov>
Sent: Thu, Apr 25, 2013 10:32 am
Subject: Request under the Freedom of Information Act – Certain Agency Records re: “Battelle”, “AAPCA”

To EPA HQ FOIA Office,

Please see the request under the Freedom of Information Act attached in PDF format. If you have any questions please do not hesitate to contact me.

Yours,
Chris Horner
American Tradition Institute

****
The information contained in this message may be privileged. This transmission is therefore intended by the sender to be confidential and intended only for the proper recipient. If you are not the intended recipient distribution of this message is prohibited.*(See attached file: ATI_EPA_Battelle_FOI_Request.pdf)(See attached file: Horner_Ack_Ltr-8.pages)*

From:	Minoli, Kevin
To:	Garbow, Avi
Subject:	FW: Response to your FOIA request
Date:	Friday, May 31, 2013 2:51:00 PM
Attachments:	Final Response 6005.pdf

Kevin S. Minoli
Acting Principal Deputy General Counsel
Office of General Counsel
Main Office Line: 202-564-8064
Direct Dial: 202-564-5551

From: Kelly, Lynn
Sent: Friday, May 31, 2013 2:48 PM
To: Minoli, Kevin; Miller, Kevin
Subject: FW: Response to your FOIA request

FYI – Text messages response is sent.

From: Weinstock, Larry
Sent: Friday, May 31, 2013 2:46 PM
To: chris.horner@cei.org
Subject: Response to your FOIA request

Please find the response to your FOIA regarding Gina McCarthy texts attached.

Thanks,
Larry Weinstock

From:	Kelly, Lynn
To:	Minoli, Kevin; Miller, Kevin
Subject:	FW: Response to your FOIA request
Date:	Friday, May 31, 2013 2:47:46 PM
Attachments:	Final Response 6005.pdf

FYI – Text messages response is sent.

From: Weinstock, Larry
Sent: Friday, May 31, 2013 2:46 PM
To: chris.horner@cei.org
Subject: Response to your FOIA request

Please find the response to your FOIA regarding Gina McCarthy texts attached.

Thanks,
Larry Weinstock

From: McDermott, Marna
To: Miller, Kevin (Miller.Kevin@epa.gov); Kelly, Lynn (Kelly.Lynn@epa.gov)
Subject: FW: Wash Examiner: Watchdog group sues EPA for text messages from top officials
Date: Friday, April 11, 2014 2:05:00 PM

Watchdog group sues EPA for text messages from top officials

BY MICHAL CONGER | APRIL 11, 2014 AT 11:47 AM
http://washingtonexaminer.com/watchdog-group-sues-epa-for-text-messages-from-top-officials/article/2547105

A nonprofit watchdog group is suing the Environmental Protection Agency seeking text messages from top officials after the agency denied a Freedom of Information Act request for the records.

The Competitive Enterprise Institute filed the FOIA request in December for messages sent to and from current EPA AdministratorGina McCarthy from 11 officials on government-assigned devices.

The EPA refused to waive fees for the message transcripts, effectively denying the request,according to CEI.

FOIA law allows fees, which can easily run into the thousands of dollars for such requests, to be waived for nonprofit and media groups that use the information for the public benefit.

The EPA has already admitted to destroying text messages sent by McCarthy from her government phone, saying they were personal and therefore not subject to the request, according to CEI.

“CEI’s FOIA request will reveal whether each and every one of Ms. McCarthy's text messages to EPA colleagues were indeed 'personal', as the EPA has claimed to somehow excuse their wholesale destruction, or whether EPA has been destroying copies of officials’ use of this alternative to email. Under the law, there is no distinction between the two," said CEI fellow Chris Horner.

FOIA requests from CEI forced the EPA to release emails under former administrator Lisa Jackson's “Richard Windsor” alias, which she used to conduct government business.

CEI has also filed FOIA requests for emails, text messages and instant messages from Jackson, McCarthy and other EPA officials.

The rejection that sparked the lawsuit is not the first time EPA has refused fee waivers to stonewall CEI, according to the group.

A review by Horner and CEI last year suggested that the EPA was more likely to waive fees for environmental groups the agency considers "friendly" to its agenda and to deny waivers for

conservative groups the agency considers hostile to its agenda.

Federal law doesn't permit agencies to deny FOIA requests because the requesters are critics of the agency.

Liz Purchia
Press Secretary
U.S. Environmental Protection Agency
Direct: 202-564-6691
Cell: 202-841-2230

From:	Bruce, Barbara
To:	Miller, Kevin
Subject:	FW: Washington Times inquiry: Gina McCarthy text message FOIA
Date:	Monday, April 29, 2013 8:04:40 AM
Attachments:	CEI EPA McCarthy Text Message FOIA I.pdf

FYI

From: Stephen Dinan [mailto:sdinan@washingtontimes.com]
Sent: Friday, April 26, 2013 7:31 AM
To: Kemery, Dale; Kika, Stacy; Bruce, Barbara
Subject: Washington Times inquiry: Gina McCarthy text message FOIA

Hi EPA press folks,

I'm working on a story about a FOIA request filed last night for Ms. McCarthy's text messages from days she was testifying to Congress. I know the FOIA still has plenty of time to run its course, but Chris Horner, who filed the FOIA, says in his request that he doesn't believe EPA is storing and searching text communications properly for purposes of FOIA requests. I wanted to pose that question to you all specifically and see what EPA policy is, and whether text messages are regularly searched as part of electronic records requests.

Second, it appears Mr. Horner chose the dates Ms. McCarthy was testifying to Congress because he believes there was questionable text messages sent during the time she was before the panels. As he put it in his FOIA, "Further, we have it on information and belief that Ms. McCarthy was uniquely active with text messaging on the dates in question, including in ways that caused internal concern." I wanted to get your response/comment to that accusation.

I assume your FOIA office has it, but here is a copy of the request:

Stephen

Stephen Dinan
Washington Times
202 488 0643
sdinan@washingtontimes.com

From:	Miller, Kevin
To:	Minoli, Kevin
Cc:	McDermott, Marna
Subject:	FW: Washington Times inquiry: Gina McCarthy text message FOIA
Date:	Monday, April 29, 2013 8:09:00 AM
Attachments:	CEI EPA McCarthy Text Message FOIA I.pdf

Sent as FYI – new CEI request -- email below describes request.

From: Bruce, Barbara
Sent: Monday, April 29, 2013 8:05 AM
To: Miller, Kevin
Subject: FW: Washington Times inquiry: Gina McCarthy text message FOIA

FYI

From: Stephen Dinan [mailto:sdinan@washingtontimes.com]
Sent: Friday, April 26, 2013 7:31 AM
To: Kemery, Dale; Kika, Stacy; Bruce, Barbara
Subject: Washington Times inquiry: Gina McCarthy text message FOIA

Hi EPA press folks,

I'm working on a story about a FOIA request filed last night for Ms. McCarthy's text messages from days she was testifying to Congress. I know the FOIA still has plenty of time to run its course, but Chris Horner, who filed the FOIA, says in his request that he doesn't believe EPA is storing and searching text communications properly for purposes of FOIA requests. I wanted to pose that question to you all specifically and see what EPA policy is, and whether text messages are regularly searched as part of electronic records requests.

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Stephen

Stephen Dinan
Washington Times
202 488 0643
sdinan@washingtontimes.com

From: Grady, Mary
To: Albright, Scott; Anderson, Cindy; Hammitt, Jennifer; Kelly, Lynn; Margolis, Alan; Miller, Kevin; Nguyen, Quoc; Schulson, Daniel
Subject: Greenwire: Conservative group sues to obtain McCarthy text messages
Date: Wednesday, May 29, 2013 4:16:58 PM

EPA:

Conservative group sues to obtain McCarthy text messages

Emily Yehle, E&E reporter

Published: Wednesday, May 29, 2013

The Competitive Enterprise Institute filed a Freedom of Information Act lawsuit today demanding that U.S. EPA turn over air chief Gina McCarthy's text messages.

McCarthy, President Obama's pick to head EPA, sent text messages to staff on an agency-issued PDA, according to the lawsuit. CEI wants the messages from the days McCarthy testified in front of congressional committees.

The lawsuit comes as McCarthy's nomination sits in the Senate, where Sen. Roy Blunt (R-Mo.) has placed it on hold to force EPA and other agencies to set a timeline for a draft environmental impact statement on a controversial project in his state (*E&ENews PM*, May 23).

In a complaint filed today with the U.S. District Court for the District of Columbia, CEI claims McCarthy regularly used text messaging for work correspondence. The group also claims that a "senior agency official" warned her against texting about lawmakers, especially on days where she testified in the House and Senate.

The group says it filed the lawsuit when EPA declined to hand over the texts for 18 specific dates through the FOIA process.

"EPA must produce these records under the Freedom of Information Act and, in the process, admit one of two scenarios: Either EPA has maintained text messages as required by law but has chosen repeatedly to withhold them ... or EPA has destroyed the texts, with possible criminal penalties," the conservative group said in a news release.

The isn't the first FOIA lawsuit CEI has filed in an attempt to get electronic correspondence. Last month, CEI joined the American Tradition Institute in seeking instant-message conversations for three top current and former EPA officials, including McCarthy. The groups withdrew the suit after an "atypically specific response" in which EPA asserted no such records existed (*E&ENews PM*, April 25).

CEI's involvement in that suit was spearheaded by senior fellow Christopher Horner, who last year uncovered EPA's practice of assigning alternative email accounts to agency administrators. That practice has also sparked concern from Capitol Hill and outside watchdog groups about whether such addresses violate the Federal Records Act.

[Note: the complaint has been sent to Kevin Miller.]

Mary Grady, Law Librarian
U.s. Environmental Protection Agency
Office of General Counsel

202/564-3972
grady.mary@epa.gov

Tell us how we're doing - rate our customer service!

http://www.surveymonkey.com/s/epalibsurvey

From: McDermott, Marna
To: Minoli, Kevin
Subject: I cant find it in FOIA online but it is on CEI"s website
Date: Friday, April 26, 2013 2:49:00 PM

---

http://cei.org/news-releases/cei-files-foia-gina-mccarthy-text-messages

It says filed by Chris Horner so I'll try searching for him.

Marna McDermott
Associate Deputy General Counsel
U.S. Environmental Protection Agency
(202) 564-2890

My working hours will be more limited from Monday, April 22nd until Thursday, May 2nd because I will be on furlough for a portion of each day. I expect to be in the office from approximately 10 am until 4:30 pm during that time period. I will be out of the office on Friday, May 3rd.

From: Grady, Mary
To: Albright, Scott; Anderson, Cindy; Hammitt, Jennifer; Kelly, Lynn; Margolis, Alan; Miller, Kevin; Nguyen, Quoc; Schulson, Daniel
Subject: Inside EPA: EPA Pressed On Conflict Policy After State Air Group"s Contract Scrapped
Date: Monday, April 29, 2013 9:14:45 AM

EPA Pressed On Conflict Policy After State Air Group's Contract Scrapped

Posted: April 26, 2013

EPA is being urged to provide information on its role in Battelle's decision to dissolve a contract to give technical assistance to a new group of state air regulators after EPA said the contract conflicts with Battelle's work with the agency, with critics of the move saying it appears the agency "bullied" Battelle into ending the contract.

Conservative think tank American Tradition Institute (ATI) filed an April 25 Freedom of Information Act (FOIA) request seeking copies of all EPA Office of the Administrator and Office of Air & Radiation emails, instant messages and text messages sent from Jan. 2 through the present day that reference the new air group and Battelle.

Texas is are also pressing EPA for answers about Battelle's decision to end the contract to provide services to the nascent Association of Air Pollution Control Agencies (AAPCA), a group that aims to give states technical help implementing EPA rules. "[W]e admonish the EPA not just for bullying Battelle into withdrawing from the AAPCA contract, but also for lack of communication with AAPCA directly," Texas said in an April 5 letter to EPA.

AAPCA initially contracted with Battelle to administer the group's launch, which Ohio EPA Director Scott Nally spearheaded as an alternative to the National Association of Clean Air Agencies (NACAA), a group that represents many local and state air agencies. AAPCA launched Jan. 23 with 17 members, including a handful of states that criticized NACAA for taking policy positions supporting EPA emissions rules that some of NACAA's members oppose.

Nally said that his group would focus on technical work implementing agency rules, and reached out to Battelle for assistance. But an early rift developed among AAPCA members over signals the group might pursue a political agenda to fight EPA rules, a stance at odds with its intent to focus on technical support to states.

Last month, Battelle dissolved the contract with AAPCA, a move that sources at the time said was a result of EPA pressuring Battelle by threatening its current and potential future contracts with the agency. Battelle at the time would not say what type of work the agency found to be in conflict with the AAPCA contract.

ATI in its FOIA request builds on the suggestion that EPA pressured Battelle into ending the contract, saying, "We are interested in EPA's discussions" of AAPCA, "a group formed to exchange technical information regarding state-level compliance with EPA Clean Air Act regulations -- technical information that is apparently not well-received within the agency -- and EPA overtures to an AAPCA contractor(s) which might be vulnerable to pressure from EPA to terminate those relationships for fear of jeopardizing current or possible future EPA contracts."

The Texas Commission on Environmental Quality (TCEQ) also sent an April 5 letter to EPA air chief Gina McCarthy, President Obama's nominee to lead the agency, seeking information about the agency's handling of the matter.

"Instead of initiating a conversation regarding such a consequential decision, EPA chose to threaten our contractor with the loss of current and future contracts," TCEQ says.

EPA and Ohio EPA spokespeople did not respond to requests for comment, and Battelle declined to comment on either the FOIA request or the TCEQ letter. ATI says in a statement that it looks "forward to learning what EPA officials said among themselves about this alleged mob-style intimation of a private company."

Conflict-Of-Interest

An ATI source says the group filed the FOIA request to find out details of what the source calls "a pretty incredible example of 'gangster government'" that "involves EPA threatening Battelle with contractual retaliation if it continues to do consulting work for states opposed to EPA" regulations. The source is also seeking more information on other examples of people "similarly shaken down" by EPA and may file FOIA requests for those records as well.

Battelle has entered into EPA contracts in recent years worth $239 million, including more than $147 million for work in Ohio, where the organization is based, according to *USASpending.gov.*

EPA headquarters and Region V spokespeople last month declined to comment on which contract was in conflict, saying they did not have enough information to make a determination. Battelle declined to provide specifics, though Ohio's Nally told *Inside EPA* March 19 that he would continue to seek more information.

State officials were quick to warn the Battelle conflict could have consequences for other contractors that do work for EPA and for groups that have relationships with the agency. And observers say it also raises question about the role of a contractor that signs a contract to do work for the agency and a recipient of EPA grant funds, given that the AAPCA member states were to have paid Battelle for its work in part through EPA grants.

Additionally, an American Petroleum Institute source tells *Inside EPA* that the trade group contracted with Battelle to conduct a hydraulic fracturing study. "How is it that they could work on that report for us, and they can't work for states to give them advice on air issues? How is that a conflict? It smells."

The TCEQ letter, signed by Chairman Bryan Williams, also asks whether EPA has made similar conflict-of-interest determinations for other multi-jurisdictional organizations, including AAPCA rival NACAA.

"Does NACAA have any contractors that also have contracts with EPA?" the letter asks. "How will this decision be consistently applied to other organizations and contractors?"

Further, it seeks information on what agency official made the Battelle contract decision and what authority it was executed under. And it seeks guidance from EPA for how AAPCA should choose a future contractor in light of the Battelle situation. EPA has not yet responded to the letter, a TCEQ spokesman says. -- *Dawn Reeves* (dreeves@iwpnews.com)

From: Hilton, Patricia
To: McKenzie, Raymond; DAVIS, TANIKA; Anderson, Cindy; Simms, Shavonne
Subject: Latest FOIA Request Discussion
Attachments: Horner (McCarthy Phone PDA Bills Dec 23, 2009, July 5, 2011)(c).pdf

---

From:	Grady, Mary
To:	Miller, Kevin; Cooper, Geoff
Subject:	New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC
Date:	Wednesday, May 29, 2013 3:02:03 PM
Attachments:	CourtLink_Dockets_US-DIS-DCD_1_13cv779_541927_5.29.2013_145917720.html CourtLink_Document_US-DIS-DCD_1_13cv779_Idx_541927_5.29.2013_145918783.pdf
Importance:	High

From:	Miller, Kevin
To:	Kelly, Lynn; Anderson, Cindy; Hammitt, Jennifer
Subject:	Plan FOIA response to CEI FOIA assigned to OGC
Start:	Tuesday, May 20, 2014 9:00:00 AM
End:	Tuesday, May 20, 2014 9:30:00 AM
Location:	DCRoomARN7428/DC-Ariel-Rios-OGC
Attachments:	Horner (CEI OGC McCarthy) Rqst.pdf

From:	Miller, Kevin
To:	Kelly, Lynn; Anderson, Cindy; Hammitt, Jennifer; McDermott, Marna
Subject:	Plan FOIA response to CEI FOIA assigned to OGC
Start:	Tuesday, May 20, 2014 9:00:00 AM
End:	Tuesday, May 20, 2014 9:30:00 AM
Location:	DCRoomARN7428/DC-Ariel-Rios-OGC
Attachments:	Horner (CEI OGC McCarthy) Rqst.pdf

From: Veney, Carla
To: Patrick, Monique; Minoli, Kevin
Subject: RE: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)
Date: Monday, October 28, 2013 5:42:04 PM

He is currently undecided if he is going to his 9-10. He will decide in the morning so I will just note you on his calendar at 9:15. Thx

---

From: Patrick, Monique
Sent: Monday, October 28, 2013 4:57 PM
To: Minoli, Kevin
Cc: Veney, Carla
Subject: RE: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

It looks like Avi has a mtg. from 9-10 on his calendar but I have cc'd Carla to double check to see if Avi's actually going to that mtg.

From: Minoli, Kevin
Sent: Monday, October 28, 2013 4:39 PM
To: Patrick, Monique
Subject: Fw: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

Any chance I could meet with Avi at 915 on the same topic? Just me and him? Thanks.

Kevin S. Minoli
Acting Principal Associate General Counsel
Office of General Counsel
Main Line: 564-8064
Direct Dial: 564-5551

From: Minoli, Kevin
Sent: Monday, October 28, 2013 4:29:23 PM
To: Anderson, Cindy; Jones, Gail-R
Cc: Miller, Kevin; Patrick, Monique
Subject: Re: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

Gail is out today, but can we do 930?

Kevin S. Minoli
Acting Principal Associate General Counsel
Office of General Counsel
Main Line: 564-8064
Direct Dial: 564-5551

From: Anderson, Cindy
Sent: Monday, October 28, 2013 3:37:38 PM
To: Jones, Gail-R

Cc: Minoli, Kevin; Miller, Kevin
Subject: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

Gail –

Kevin Miller and I would like to talk with Kevin Minoli for about 15 minutes, possibly tomorrow morning before 10 am if he's available, but whenever.

It's about CEI FOIA lawsuit regarding text message billing for Gina McCarthy.

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From:	Anderson, Cindy
To:	Minoli, Kevin; Jones, Gail-R
Cc:	Miller, Kevin; Patrick, Monique
Subject:	RE: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)
Date:	Tuesday, October 29, 2013 8:56:01 AM

Kevin Miller and I will join you at 9:30 this morning to talk about CEI (13-1074)

Cindy
564-2690

From: Minoli, Kevin
Sent: Monday, October 28, 2013 4:29 PM
To: Anderson, Cindy; Jones, Gail-R
Cc: Miller, Kevin; Patrick, Monique
Subject: Re: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

Gail is out today, but can we do 930?

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It's about CEI FOIA lawsuit regarding text message billing for Gina McCarthy.

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Minoli, Kevin
To: Veney, Carla; Patrick, Monique
Subject: Re: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)
Date: Monday, October 28, 2013 5:56:49 PM

Thank you.

Kevin S. Minoli
Acting Principal Associate General Counsel
Office of General Counsel
Main Line: 564-8064
Direct Dial: 564-5551

From: Veney, Carla
Sent: Monday, October 28, 2013 5:42:01 PM
To: Patrick, Monique; Minoli, Kevin
Subject: RE: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

He is currently undecided if he is going to his 9-10. He will decide in the morning so I will just note you on his calendar at 9:15. Thx

---

From: Patrick, Monique
Sent: Monday, October 28, 2013 4:57 PM
To: Minoli, Kevin
Cc: Veney, Carla
Subject: RE: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

It looks like Avi has a mtg. from 9-10 on his calendar but I have cc'd Carla to double check to see if Avi's actually going to that mtg.

From: Minoli, Kevin
Sent: Monday, October 28, 2013 4:39 PM
To: Patrick, Monique
Subject: Fw: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

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From: Minoli, Kevin
Sent: Monday, October 28, 2013 4:29:23 PM
To: Anderson, Cindy; Jones, Gail-R
Cc: Miller, Kevin; Patrick, Monique

Subject: Re: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

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Office of General Counsel
Main Line: 564-8064
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From: Anderson, Cindy
Sent: Monday, October 28, 2013 3:37:38 PM
To: Jones, Gail-R
Cc: Minoli, Kevin; Miller, Kevin
Subject: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

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EPA/OGC
(202) 564-2690

From:	Minoli, Kevin
To:	Anderson, Cindy; Jones, Gail-R
Cc:	Miller, Kevin; Patrick, Monique
Subject:	Re: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)
Date:	Monday, October 28, 2013 4:29:26 PM

Gail is out today, but can we do 930?

Kevin S. Minoli
Acting Principal Associate General Counsel
Office of General Counsel
Main Line: 564-8064
Direct Dial: 564-5551

From: Anderson, Cindy
Sent: Monday, October 28, 2013 3:37:38 PM
To: Jones, Gail-R
Cc: Minoli, Kevin; Miller, Kevin
Subject: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

Gail –

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It's about CEI FOIA lawsuit regarding text message billing for Gina McCarthy.

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Patrick, Monique
To: Minoli, Kevin
Cc: Veney, Carla
Subject: RE: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)
Date: Monday, October 28, 2013 4:57:09 PM

It looks like Avi has a mtg. from 9-10 on his calendar but I have cc'd Carla to double check to see if Avi's actually going to that mtg.

From: Minoli, Kevin
Sent: Monday, October 28, 2013 4:39 PM
To: Patrick, Monique
Subject: Fw: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

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Office of General Counsel
Main Line: 564-8064
Direct Dial: 564-5551

From: Minoli, Kevin
Sent: Monday, October 28, 2013 4:29:23 PM
To: Anderson, Cindy; Jones, Gail-R
Cc: Miller, Kevin; Patrick, Monique
Subject: Re: 15 minutes with Kevin Minoli tomorrow (Tues, Oct. 29)

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Office of General Counsel
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Direct Dial: 564-5551

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Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Lo, Michelle (USADC)
To: Kelly, Lynn
Subject: RE: Activity in Case 1:13-cv-00779-BAH COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Answer to Complaint
Date: Monday, July 22, 2013 9:30:42 AM
Attachments: ecf d_Answer.pdf

Lynn: Attached is a copy of the Answer as filed. Thanks.

-----Original Message-----
From: Kelly, Lynn [mailto:Kelly.Lynn@epa.gov]
Sent: Friday, July 19, 2013 3:50 PM
To: Lo, Michelle (USADC)
Subject: RE: Activity in Case 1:13-cv-00779-BAH COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Answer to Complaint

Thanks, have a great weekend! (I take it you did not hear back from CEI..)

Lynn Kelly | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | ARN, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-3266 The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. If you are not the intended recipient, or believe you have received this communication in error, please delete the copy you received, and do not print, copy, retransmit, disseminate, or otherwise use the information. Thank you.

-----Original Message-----
From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, July 19, 2013 3:49 PM
To: Kelly, Lynn
Subject: Fwd: Activity in Case 1:13-cv-00779-BAH COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Answer to Complaint

Lynn: FYI, I filed the answer today. I'm out of the office for the day, so I'll send you a copy of the filed version on Monday. Thanks.

Begin forwarded message:

From: <DCD_ECFNotice@dcd.uscourts.gov<mailto:DCD_ECFNotice@dcd.uscourts.gov>>
Date: July 19, 2013, 3:41:03 PM EDT
To: <DCD_ECFNotice@dcd.uscourts.gov<mailto:DCD_ECFNotice@dcd.uscourts.gov>>
Subject: Activity in Case 1:13-cv-00779-BAH COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Answer to Complaint

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of Columbia

Notice of Electronic Filing

The following transaction was entered by Lo, Michelle on 7/19/2013 at 3:41 PM and filed on 7/19/2013
Case Name: COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Case Number: 1:13-cv-00779-BAH<https://ecf.dcd.uscourts.gov/cgi-bin/DktRpt.pl?160175>
Filer: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Document Number: 6<https://ecf.dcd.uscourts.gov/doc1/04514365739?caseid=160175&de_seq_num=18&magic_num=36705777>

Docket Text:
ANSWER to Complaint by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.(Lo, Michelle)

1:13-cv-00779-BAH Notice has been electronically mailed to:

Hans Frank Bader hfb138@yahoo.com<mailto:hfb138@yahoo.com>

Michelle Lo Michelle.Lo2@usdoj.gov<mailto:Michelle.Lo2@usdoj.gov>

1:13-cv-00779-BAH Notice will be delivered by other means to::

The following document(s) are associated with this transaction:

Document description:Main Document
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=7/19/2013] [FileNumber=3710891-0]
[146a7ab67b3d714eff50f8d5cba488603dc6957b3f94730bb5f73036c3d97e970f25
21d072ee90869770f6a84373bdd560410cdf665cb90d7f0e4232b9ee440a]]

From: Reynolds, Thomas
To: Ketcham-Colwill, Nancy; Minoli, Kevin; Johnson, Alisha
Subject: Re: CEI asks for full McCarthy text records
Date: Monday, June 03, 2013 7:53:43 PM

We've engaged w the reporter and she is updating the story w a quote from us.

From: Ketcham-Colwill, Nancy
Sent: Monday, June 03, 2013 7:40:10 PM
To: Minoli, Kevin; Reynolds, Thomas; Johnson, Alisha
Subject: FW: CEI asks for full McCarthy text records

Next requests . . .

From: POLITICO Pro Whiteboard [mailto:politicoemail@politicopro.com]
Sent: Monday, June 03, 2013 5:52 PM
To: Ketcham-Colwill, Nancy
Subject: CEI asks for full McCarthy text records

6/3/13 5:49 PM EDT

In response to a Freedom of Information Act request from the Competitive Enterprise Institute, EPA has denied that EPA air chief Gina McCarthy sent text messages on her agency phone during dates she was testifying before Congress, according to CEI attorney Chris Horner. The agency's response came just days after Horner filed a lawsuit in federal district court claiming the agency was dragging its feet on his FOIA request.

In response, Horner has filed two more FOIA requests. In one filed Friday, he asks for "copies of all EPA-related text messages sent or received by Assistant Administrator for Air and Radiation Gina McCarthy on her personal mobile telephone(s) or other personal data assistant(s) or personal digital assistant(s)…" and information about her use of personal phones for texting.

In another request filed Sunday, Horner asks for the agency to turn over, within 20 working days, "copies of all invoices or bills" associated with mobile phones or PDAs provided to McCarthy from July 1, 2009 to June 30, 2012. "Given that we are reliably informed that Ms. McCarthy was a frequent user of text messaging, it is a reasonable conclusion that EPA is not in fact maintaining and preserving these records as required by law and regulation. Alternatively, Ms. McCarthy is creating these records on a private device(s), which records we sought in a separate request dated March 31, 2013," the request says.

— *Erica Martinson*

You've received this POLITICO Pro content because your customized settings include: Energy Topic: EPA. To change your alert settings, please go to https://www.politicopro.com/member/?webaction=viewAlerts.

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From:	Nebeker, Mark (USADC)
To:	Christopher Horner
Cc:	Hans Bader; Sam Kazman; Anderson, Cindy
Subject:	RE: CEI v. EPA (13-1074)
Date:	Tuesday, November 12, 2013 4:33:17 PM
Attachments:	image001.png

Mr. Horner:

I am attempting to figure out whether we have any issues remaining as to CEI's FOIA request HQ-2013-005618 for records regarding Gina McCarthy IT training. Can you tell me whether we can put that one behind us?

From: Chris Horner
To: Anderson, Cindy
Cc: mark.nebeker@usdoj.gov; Hans Bader; Myron Ebell; Sam Kazman
Subject: RE: CEI v. EPA (13-1074) billing for Gina McCarthy text messages
Date: Tuesday, September 17, 2013 9:22:32 AM

Thank you Cindy, yes we consent.

Best,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)

-----Original Message-----
From: Anderson, Cindy [mailto:anderson.cindy@epa.gov]
Sent: Tue 9/17/2013 9:17 AM
To: Chris Horner
Cc: mark nebeker@usdoj.gov
Subject: CEI v. EPA (13-1074) billing for Gina McCarthy text messages

Mr. Horner

As you know, we have been making every effort to work with you to satisfy your recent FOIA requests regarding Ms. McCarthy's text messages, the billing therefor, and other information. As part of that continuing effort, I sought confirmation from the Agency's billing office that handles all EPA-issued mobile devices regarding monthly invoices and learned that for a period of approximately six to eight months (from April 2011 to November 2011) AT&T bills sent to EPA for mobile device usage included some detailed listing of text messages (without the texts themselves) for the mobile device assigned to Ms. McCarthy who was then Assistant Administrator for the Office of Air and Radiation.
Prior to April 2011, when Ms. McCarthy had used Verizon for her mobile service, the bills were in the form that was sent to you last week, with only an aggregate number of text messages noted.

The EPA billing office indicated that until November 2011, AT&T provided monthly invoices for all Agency mobile devices on CDs from which it was possible to extract information about an individual user's text messaging. AT&T changed their billing in November 2011 to provide on-line invoices to EPA; we are now exploring whether data about individual use of text messaging can be extracted from this format.

I have requested that the bills for the months from April to November 2011 be sent to me as soon as possible. Because it appears from the single month sample that was extracted, the invoices are lengthy and contain a number of different phone numbers, it will likely take several days this week to review and redact any exempt information from these records (e.g., personal phone numbers).

In these circumstances, I have asked Mark Nebeker, the AUSA who is representing the EPA in this matter, to seek from the Court an extension of time before filing the Joint Proposed Briefing Schedule that is now due September 19, 2013. The purpose of the extension is to enable EPA to review the records and provide you with any releasable information. We would resume any discussion about withdrawal of the pending litigation once you have had an opportunity to review the records released to you.

Please advise Mr. Nebeker and me whether you will consent to such a motion.

Cindy Anderson
EPA/OGC

(202) 564-2690

From: Christopher Horner
To: Anderson, Cindy
Cc: mark.nebeker@usdoj.gov; Hans Bader; Sam Kazman
Subject: Re: CEI v. EPA (13-1074) billing for Gina McCarthy text messages
Date: Wednesday, October 02, 2013 10:55:50 AM
Attachments: image.png

Dear Ms. Anderson, per the below from September 17, or six weeks ago, "I have requested that the bills for the months from April to November 2011 be sent to me as soon as possible. Because it appears from the single month sample that was extracted, the invoices are lengthy and contain a number of different phone numbers, it will likely take several days this week to review and redact any exempt information from these records", can you please tell me the status of EPA's processing?

Best,
Chris Horner

On 9/17/13 9:17 AM, "Anderson, Cindy" <anderson.cindy@epa.gov> wrote:

Mr. Horner

As you know, we have been making every effort to work with you to satisfy your recent FOIA requests regarding Ms. McCarthy's text messages, the billing therefor, and other information. As part of that continuing effort, I sought confirmation from the Agency's billing office that handles all EPA-issued mobile devices regarding monthly invoices and learned that for a period of approximately six to eight months (from April 2011 to November 2011) AT&T bills sent to EPA for mobile device usage included some detailed listing of text messages (without the texts themselves) for the mobile device assigned to Ms. McCarthy who was then Assistant Administrator for the Office of Air and Radiation.

Prior to April 2011, when Ms. McCarthy had used Verizon for her mobile service, the bills were in the form that was sent to you last week, with only an aggregate number of text messages noted.

The EPA billing office indicated that until November 2011, AT&T provided monthly invoices for all Agency mobile devices on CDs from which it was possible to extract information about an individual user's text messaging. AT&T changed their billing in November 2011 to provide on-line invoices to EPA; we are now exploring whether data about individual use of text messaging can be extracted

from this format.

I have requested that the bills for the months from April to November 2011 be sent to me as soon as possible. Because it appears from the single month sample that was extracted, the invoices are lengthy and contain a number of different phone numbers, it will likely take several days this week to review and redact any exempt information from these records (e.g., personal phone numbers).

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Please advise Mr. Nebeker and me whether you will consent to such a motion.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Chris Horner
To: Nebeker, Mark (USADC)
Cc: Anderson, Cindy; Sam Kazman; Hans Bader
Subject: Re: CEI v. EPA (13-1074) billing for Gina McCarthy text messages
Date: Wednesday, September 18, 2013 11:48:31 AM

Two weeks ok Mark I will get a more complete response to you if it seems appropriate when I am able

Sent from my iPhone

On Sep 18, 2013, at 11:40 AM, "Nebeker, Mark (USADC)" <Mark.Nebeker@usdoj.gov> wrote:

Mr. Horner:

I understand from Agency counsel in this matter that the EPA continues to pursue any information among its records that is responsive to CEI's FOIA request for all billing for text messages (from January 2009 to July 2013, the time of the original search) that are attributable to the mobile device that EPA provided to Gina McCarthy. As I indicated in my message to you earlier, the Agency has located records among its files from which certain data about individual text messages for a particular employee may be extracted. I understand that Agency counsel has directed the office responsible for mobile devices within EPA to provide that detailed information for as many months as are available. Because this is an ongoing effort and will require review of the detailed information in perhaps many months' invoices to determine what personal information is exempt from disclosure, the Agency seeks an extension of 2 weeks to file a Joint briefing schedule with the Court (meaning we would file it on 10/3/13).

Is 2 weeks OK?

Also, during that time, I understand that the EPA will review several months of invoices in order to make at least an initial release, after which the Agency would consider a further production schedule if additional information still needs to be reviewed. Recall that I said the Agency located the additional information for about 6 months. I am asking that they confirm that we have found all responsive information for the whole period covered by the FOIA request. If any additional information is found, we will let you know.

From: Chris Horner [mailto:CHorner@cei.org]
Sent: Tuesday, September 17, 2013 9:22 AM
To: Anderson, Cindy
Cc: Nebeker, Mark (USADC); Hans Bader; Myron Ebell; Sam Kazman
Subject: RE: CEI v. EPA (13-1074) billing for Gina McCarthy text messages

Thank you Cindy, yes we consent.

Best,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor
Washington, DC, 20036 +1.202.262.4458 (M)

-----Original Message-----
From: Anderson, Cindy [mailto:anderson.cindy@epa.gov]
Sent: Tue 9/17/2013 9:17 AM
To: Chris Horner
Cc: mark nebeker@usdoj.gov
Subject: CEI v. EPA (13-1074) billing for Gina McCarthy text messages

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Cindy Anderson
EPA/OGC
(202) 564-2690

From: Nebeker, Mark (USADC)
To: Chris Horner
Cc: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) billing for Gina McCarthy text messages
Date: Wednesday, September 18, 2013 11:42:19 AM

Mr. Horner:

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Sent: Tuesday, September 17, 2013 9:22 AM
To: Anderson, Cindy
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Subject: RE: CEI v. EPA (13-1074) billing for Gina McCarthy text messages

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Best,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)

-----Original Message-----
From: Anderson, Cindy [mailto:anderson.cindy@epa.gov]
Sent: Tue 9/17/2013 9:17 AM
To: Chris Horner
Cc: mark nebeker@usdoj.gov

Subject: CEI v. EPA (13-1074) billing for Gina McCarthy text messages

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Cindy Anderson
EPA/OGC
(202) 564-2690

From: Christopher Horner
To: Anderson, Cindy
Cc: mark.nebeker@usdoj.gov; Hans Bader; Sam Kazman
Subject: Re: CEI v. EPA (13-1074) billing for Gina McCarthy text messages
Date: Thursday, October 24, 2013 4:19:30 PM
Attachments: image.png

Dear Ms. Anderson,

Per the below two emails from September 17 and 18, and specifically e.g., "I have requested that the bills for the months from April to November 2011 be sent to me as soon as possible. Because it appears from the single month sample that was extracted, the invoices are lengthy and contain a number of different phone numbers, it will likely take several days this week to review and redact any exempt information from these records", can you please tell me the status of EPA's processing?

Best,
Chris Horner

------ Forwarded Message

From: "Nebeker, Mark (USADC)" <Mark.Nebeker@usdoj.gov>
Date: Wed, 18 Sep 2013 15:39:43 +0000
To: Chris Horner <CHorner@cei.org>
Cc: "Anderson.cindy@epa.gov" <Anderson.cindy@epa.gov>
Subject: RE: CEI v. EPA (13-1074) billing for Gina McCarthy text messages

Mr. Horner:

I understand from Agency counsel in this matter that the EPA continues to pursue any information among its records that is responsive to CEI,s FOIA request for all billing for text messages (from January 2009 to July 2013, the time of the original search) that are attributable to the mobile device that EPA provided to Gina McCarthy. As I indicated in my message to you earlier, the Agency has located records among its files from which certain data about individual text messages for a particular employee may be extracted. I understand that Agency counsel has directed the office responsible for mobile devices within EPA to provide that detailed information for as many months as are available. Because this is an ongoing effort and will require review of the detailed information in perhaps many months, invoices to determine what personal information is exempt from disclosure, the Agency seeks an extension of 2 weeks to file a Joint briefing schedule with the Court (meaning we would file it on 10/3/13).

Is 2 weeks OK?

Also, during that time, I understand that the EPA will review several months of invoices in order to

make at least an initial release, after which the Agency would consider a further production schedule if additional information still needs to be reviewed. Recall that I said the Agency located the additional information for about 6 months. I am asking that they confirm that we have found all responsive information for the whole period covered by the FOIA request. If any additional information is found, we will let you know.

On 9/17/13 9:17 AM, "Anderson, Cindy" <anderson.cindy@epa.gov> wrote:

Mr. Horner

As you know, we have been making every effort to work with you to satisfy your recent FOIA requests regarding Ms. McCarthy's text messages, the billing therefor, and other information. As part of that continuing effort, I sought confirmation from the Agency's billing office that handles all EPA-issued mobile devices regarding monthly invoices and learned that for a period of approximately six to eight months (from April 2011 to November 2011) AT&T bills sent to EPA for mobile device usage included some detailed listing of text messages (without the texts themselves) for the mobile device assigned to Ms. McCarthy who was then Assistant Administrator for the Office of Air and Radiation.
Prior to April 2011, when Ms. McCarthy had used Verizon for her mobile service, the bills were in the form that was sent to you last week, with only an aggregate number of text messages noted.

The EPA billing office indicated that until November 2011, AT&T provided monthly invoices for all Agency mobile devices on CDs from which it was possible to extract information about an individual user's text messaging. AT&T changed their billing in November 2011 to provide on-line invoices to EPA; we are now exploring whether data about individual use of text messaging can be extracted from this format.

I have requested that the bills for the months from April to November 2011 be sent to me as soon as possible. Because it appears from the single month sample that was extracted, the invoices are lengthy and contain a number of different phone numbers, it will likely take several days this week to review and

redact any exempt information from these records (e.g., personal phone numbers).

In these circumstances, I have asked Mark Nebeker, the AUSA who is representing the EPA in this matter, to seek from the Court an extension of time before filing the Joint Proposed Briefing Schedule that is now due September 19, 2013. The purpose of the extension is to enable EPA to review the records and provide you with any releasable information. We would resume any discussion about withdrawal of the pending litigation once you have had an opportunity to review the records released to you.

Please advise Mr. Nebeker and me whether you will consent to such a motion.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Nebeker, Mark (USADC)
To: Christopher Horner
Cc: Anderson, Cindy
Subject: RE: CEI v. EPA, CA No. 13-1074
Date: Monday, September 16, 2013 10:32:39 AM

One snag. I was mistaken in my thinking that we got NO details from AT&T. It seems that there was a brief period that the Agency may have gotten some details not of an actual text message, but of the number that a text went to or was received from. It got these on CDs that covered billing for the whole agency's mobile devices for about 6 months in 2011, and which I just recently learned had been located. I am attempting to get more details, but don't want you dismissing if this makes any difference to your client. But we'll work toward getting this resolved regardless.

From: Christopher Horner [mailto:chris.horner@cei.org]
Sent: Monday, September 16, 2013 9:40 AM
To: Nebeker, Mark (USADC)
Cc: Anderson.cindy@epa.gov; Hans Bader; Sam Kazman
Subject: Re: CEI v. EPA, CA No. 13-1074

Thank you Mark,

We can't state that our request was satisfied, obviously, but with this information we will dismiss.

Best,
Chris Horner

On 9/12/13 9:54 AM, "Nebeker, Mark (USADC)" <Mark.Nebeker@usdoj.gov> wrote:

Mr. Horner –

As you requested in your email message of August 29, attached is information that was extracted from random invoices for the time period that you had requested regarding billing for Gina McCarthy's text messages over three years.

You will see that the Data for "TXT Messaging" is an aggregate number. The number for this particular billing period is 117 which, I understand, corresponds to the same number in the information provided to you by the Office of Air and Radiation for the invoice of that date, 23-Jul-10, that is attributable to the EPA-provided mobile phone assigned to Ms. McCarthy.

Although phone calls are delineated by each number called and the airtime and charges, that is not true for text messages. It is my understanding the Agency does not receive a record from Verizon (or, in this case, its predecessor, AT&T) of individual text messages made by its employees, including Ms. McCarthy.

You may also note that this portion of the billing that is sent to EPA electronically for all

telephone usage is for a phone number that was originally assigned to Frank Rusincovitch in 2008. I understand that, in accordance with EPA practice, one individual procured the 15 telephone devices in 2008 for the Agency and they were distributed to EPA officials as needed. The office responsible for tracking billing from the internal inventory database also keeps track of who is assigned to each device by means of the assigned telephone number. In this case, I believe, the number was activated for Gina McCarthy in 2009.

Finally, material on this document that does not relate to billing for text messages has been redacted as non-responsive.

Please let me know if this satisfies your inquiry and if your client is now prepared to dismiss some or all of the claims in the above civil action.

Mark Nebeker
(202) 252-2536

From: Chris Horner
To: Nebeker, Mark (USADC)
Cc: Anderson, Cindy
Subject: RE: CEI v. EPA, CA No. 13-1074
Date: Monday, September 16, 2013 10:40:48 AM

OK thanks, please do inform of details so I fully understand the temporary nature of ATT sending (at least some) metadata, cch

-----Original Message-----
From: Nebeker, Mark (USADC) [mailto:Mark.Nebeker@usdoj.gov]
Sent: Mon 9/16/2013 10:32 AM
To: Chris Horner
Cc: Anderson.cindy@epa.gov
Subject: RE: CEI v. EPA, CA No. 13-1074

One snag. I was mistaken in my thinking that we got NO details from AT&T. It seems that there was a brief period that the Agency may have gotten some details not of an actual text message, but of the number that a text went to or was received from. It got these on CDs that covered billing for the whole agency's mobile devices for about 6 months in 2011, and which I just recently learned had been located. I am attempting to get more details, but don't want you dismissing if this makes any difference to your client. But we'll work toward getting this resolved regardless.

From: Christopher Horner [mailto:chris horner@cei.org]
Sent: Monday, September 16, 2013 9:40 AM
To: Nebeker, Mark (USADC)
Cc: Anderson.cindy@epa.gov; Hans Bader; Sam Kazman
Subject: Re: CEI v. EPA, CA No. 13-1074

Thank you Mark,

We can't state that our request was satisfied, obviously, but with this information we will dismiss.

Best,
Chris Horner

On 9/12/13 9:54 AM, "Nebeker, Mark (USADC)" <Mark.Nebeker@usdoj.gov<mailto:Mark.Nebeker@usdoj.gov>> wrote:
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You may also note that this portion of the billing that is sent to EPA electronically for all telephone usage is for a

phone number that was originally assigned to Frank Rusincovitch in 2008. I understand that, in accordance with EPA practice, one individual procured the 15 telephone devices in 2008 for the Agency and they were distributed to EPA officials as needed. The office responsible for tracking billing from the internal inventory database also keeps track of who is assigned to each device by means of the assigned telephone number. In this case, I believe, the number was activated for Gina McCarthy in 2009.

Finally, material on this document that does not relate to billing for text messages has been redacted as non-responsive.

Please let me know if this satisfies your inquiry and if your client is now prepared to dismiss some or all of the claims in the above civil action.

Mark Nebeker
(202) 252-2536

From: Christopher Horner
To: Nebeker, Mark (USADC)
Cc: Anderson, Cindy; Hans Bader; Sam Kazman
Subject: Re: CEI v. EPA, CA No. 13-1074
Date: Monday, September 16, 2013 9:40:14 AM

Thank you Mark,

We can't state that our request was satisfied, obviously, but with this information we will dismiss.

Best,
Chris Horner

On 9/12/13 9:54 AM, "Nebeker, Mark (USADC)" <Mark.Nebeker@usdoj.gov> wrote:

Mr. Horner –

As you requested in your email message of August 29, attached is information that was extracted from random invoices for the time period that you had requested regarding billing for Gina McCarthy's text messages over three years.

You will see that the Data for "TXT Messaging" is an aggregate number. The number for this particular billing period is 117 which, I understand, corresponds to the same number in the information provided to you by the Office of Air and Radiation for the invoice of that date, 23-Jul-10, that is attributable to the EPA-provided mobile phone assigned to Ms. McCarthy.

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You may also note that this portion of the billing that is sent to EPA electronically for all telephone usage is for a phone number that was originally assigned to Frank Rusincovitch in 2008. I understand that, in accordance with EPA practice, one individual procured the 15 telephone devices in 2008 for the Agency and they were distributed to EPA officials as needed. The office responsible for tracking billing from the internal inventory database also keeps track of who is assigned to each device by means of the assigned telephone number. In this case, I believe, the number was activated for Gina McCarthy in 2009.

Finally, material on this document that does not relate to billing for text messages

has been redacted as non-responsive.

Please let me know if this satisfies your inquiry and if your client is now prepared to dismiss some or all of the claims in the above civil action.

Mark Nebeker
(202) 252-2536

From: Gottesman, Larry
To: FOIA HQ
Cc: Miller, Kevin
Subject: RE: Final Response attached
Date: Wednesday, July 03, 2013 3:39:35 PM

Just another FOIA request. Please enter in FOIAonline and provide an acknowledgement letter.

Thanks

From: LindaE Green [mailto:Green.LindaE@epamail.epa.gov] **On Behalf Of** FOIA HQ
Sent: Wednesday, July 03, 2013 3:36 PM
To: Gottesman, Larry
Subject: Fw: Final Response attached

Is this for you?

----- Forwarded by LindaE Green/DC/USEPA/US on 07/03/2013 03:34 PM -----

From: Christopher Horner <chris.horner@cei.org>
To: FOIA HQ@EPA
Date: 07/03/2013 02:11 PM
Subject: Re: Final Response attached

Dear Larry,

Thank you for this, and your inquiry. We do have a "problem" with the letter, which I believe you can readily clear up. It is a question the letter's wording does not answer and indeed begs. In the absence of an answer I am afraid this letter does not sufficiently indicate it responded to the request at issue.

A reader can not tell from the response letter that request 2013-006939 sought and EPA searched for EPA-related texts sent to or from McCarthy's **non-EPA- issued phone(s)/PDA(s).** This request sought such texts over the same 18 days as the (already responded to) request No 2013-006005, a request for texts sent to or from Ms. McCarthy's **EPA-issued phone/PDA**. Today's "no records" letter's description of our request and allusion to EPA's search is identical to that provided in response to –006005, although our requested searches are indeed materially distinct.

These responses, being identical but for changing only the FOIA request number and date, offer no indication EPA treated these substantively distinct requests as distinct requests; that EPA searched the identified location for potentially responsive records in response to -006939. As this area of FOIA policy is apparently controversial, with ever-increasing examples of EPA staff using private resources to conduct official business, this is not only a material distinction but represents a problem with EPA's response. As you also may know, my experience is that EPA has on recent occasion transposed the FOIA numbers among various requests. As such, that one distinction in an otherwise identical response is not dispositive.

Absent any indication that EPA in fact searched Ms. McCarthy's non-EPA phone(s)/PDA(s) we have no way to assess the reasonableness of the search. As such, we believe the response is insufficient.

Therefore please inform us in writing whether EPA searched McCarthy's **non-EPA- issued phone(s)/PDA(s)** as the request, which I reattach, sought.

I look forward to your response. If you have any questions please do not hesitate to contact me.

Best,
Chris Horner
202.262.4458 M

On 7/3/13 1:17 PM, "hq.foia@epa.gov" <hq.foia@epa.gov> wrote:

Please see attached file. Please email me if you have a problem with the attachment at weinstock.larry@epa.gov.

07/03/2013 01:15 PM
FOIA Request: EPA-HQ-2013-006939
(See attached file: CEI EPA McCarthy Personal PDA Text Message FOIA.pdf)

From: Anderson, Cindy
To: Chris Horner
Subject: RE: FOIA request EPA-HQ-2013-009249
Date: Wednesday, September 11, 2013 4:43:00 PM

Mr. Horner –

I from your response that you remain interested in the information that you requested that is now assigned the number EPA-HQ-2013-009249.

Processing of that particular request will continue unabated, without any tolling at this time, based on your representations below.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Chris Horner [mailto:CHorner@cei.org]
Sent: Wednesday, September 11, 2013 2:50 PM
To: Anderson, Cindy
Subject: RE: FOIA request EPA-HQ-2013-009249

Dear Ms. Anderson,

We are not aware of any progress in the litigation you refer to, as discussed, below. We are not waiving and have not waived any rights in relation to 009249 or any other request by verbally characterizing to EPA and DoJ counsel that -009249 was to protect us against EPA's current approach of not providing the responsive records we requested in 006937, but instead providing certain responsive information from those records.

For that latter reason there does not appear to be any pending or potential resolution, as in that call we suggested resolution was possible after reviewing exemplar responsive records; as you note this was two weeks ago, and we have received no such records, nor an assurance of receiving such records, but only demurrer. In fact, it is reasonable to conclude that EPA still will not produce responsive records (as identified in the "Invoice Nos" on the spreadsheet EPA provided excerpting certain responsive information from those records).

Regardless, this interpretation or response below is unilateral and in error, please do not cease processing that request, and we plan to continue operating on the relevant timetable in protecting our appellate rights as regards 009249 consistent with our request date.

If you have any questions please do not hesitate to contact me.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)

-----Original Message-----
From: Anderson, Cindy [mailto:anderson.cindy@epa.gov]
Sent: Wed 9/11/2013 2:37 PM
To: Chris Horner
Subject: FOIA request EPA-HQ-2013-009249

Mr. Horner -

I am writing in regard to the telephone conversation of August 29 between Mark Nebeker, Assistant U.S. Attorney, and you (to which I was also a party) about one of the pending FOIA lawsuits for which you serve as plaintiff's counsel.

After receiving information responsive to your earlier FOIA request for phone bills related to Gina McCarthy's use of text messages over a three-year period, you submitted an additional FOIA request, noted by number in the subject line above.

Based on the August 29 conversation, I understand that you intended the more recent FOIA request seeking "Certain Agency Records: Gina McCarthy Complete Phone/PDA bills, billing periods ending December 23, 2009, July 5, 2011" to be only "belt and suspenders" to assure that the organization you represent, Competitive Enterprise Institute, is sent the information that it continues to seek regarding billing for text messages related to Gina McCarthy's use of her EPA-issued mobile phone.

In these circumstances, I am writing now to let you know that processing of the more recent FOIA request regarding bills for Ms. McCarthy's text messages for two specified billing periods is now in abeyance, or tolled, pending potential resolution of the lawsuit related to the same information, that litigation being CEI v. EPA (13-1074, DDC).

I appreciate your acknowledging receipt of this message.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Chris Horner
To: Anderson, Cindy
Subject: RE: FOIA request EPA-HQ-2013-009249
Date: Wednesday, September 11, 2013 2:49:42 PM

Dear Ms. Anderson,

We are not aware of any progress in the litigation you refer to, as discussed, below. We are not waiving and have not waived any rights in relation to 009249 or any other request by verbally characterizing to EPA and DoJ counsel that -009249 was to protect us against EPA's current approach of not providing the responsive records we requested in 006937, but instead providing certain responsive information from those records.

For that latter reason there does not appear to be any pending or potential resolution, as in that call we suggested resolution was possible after reviewing exemplar responsive records; as you note this was two weeks ago, and we have received no such records, nor an assurance of receiving such records, but only demurrer. In fact, it is reasonable to conclude that EPA still will not produce responsive records (as identified in the "Invoice Nos" on the spreadsheet EPA provided excerpting certain responsive information from those records).

Regardless, this interpretation or response below is unilateral and in error, please do not cease processing that request, and we plan to continue operating on the relevant timetable in protecting our appellate rights as regards 009249 consistent with our request date.

If you have any questions please do not hesitate to contact me.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)

-----Original Message-----
From: Anderson, Cindy [mailto:anderson.cindy@epa.gov]
Sent: Wed 9/11/2013 2:37 PM
To: Chris Horner
Subject: FOIA request EPA-HQ-2013-009249

Mr. Horner -

I am writing in regard to the telephone conversation of August 29 between Mark Nebeker, Assistant U.S. Attorney, and you (to which I was also a party) about one of the pending FOIA lawsuits for which you serve as plaintiff's counsel.

After receiving information responsive to your earlier FOIA request for phone bills related to Gina McCarthy's use of text messages over a three-year period, you submitted an additional FOIA request, noted by number in the subject line above.

Based on the August 29 conversation, I understand that you intended the more recent FOIA request seeking "Certain Agency Records: Gina McCarthy Complete Phone/PDA bills, billing periods ending December 23, 2009, July 5, 2011" to be only "belt and suspenders" to assure that the organization you represent, Competitive Enterprise Institute, is sent the information that it continues to seek regarding billing for text messages related to Gina McCarthy's use of her EPA-issued mobile phone.

In these circumstances, I am writing now to let you know that processing of the more recent FOIA request regarding bills for Ms. McCarthy's text messages for two specified billing periods is now in abeyance, or tolled, pending

potential resolution of the lawsuit related to the same information, that litigation being CEI v. EPA (13-1074, DDC).

I appreciate your acknowledging receipt of this message.

Cindy Anderson
EPA/OGC
(202) 564-2690

From:	Anderson, Cindy
To:	Bruce, Barbara
Subject:	RE: FOIA request EPA-HQ-2013-009249
Date:	Thursday, September 12, 2013 11:24:00 AM
Attachments:	Horner (2013-009249) Aug.2013.pdf

Here's the pdf of this email string to be uploaded to FOIAonline for this FOIA request from Chris Horner.

Thanks so much for your help!

Cindy
564-2690

From: Bruce, Barbara
Sent: Thursday, September 12, 2013 11:14 AM
To: Anderson, Cindy
Subject: RE: FOIA request EPA-HQ-2013-009249

Ok send the pdf to me as an attachment in the email and I can save and scan it into FOIA Online

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From: Anderson, Cindy
Sent: Thursday, September 12, 2013 11:12 AM
To: Bruce, Barbara
Subject: FW: FOIA request EPA-HQ-2013-009249

Barbara –

Could you please help me enter the following email messages to FOIAonline for the above FOIA request from Chris Horner? (sooner or later I know I have to learn FOIAonline, but Kevin suggested I might ask you to help this time)

I will pdf the email string below to send to you, as well as print it out and put in your box.

Thanks!

Cindy
564-2690

From: Anderson, Cindy
Sent: Wednesday, September 11, 2013 4:43 PM
To: 'Chris Horner'
Subject: RE: FOIA request EPA-HQ-2013-009249

Mr. Horner –

I understand from your response that you remain interested in the information that you requested that is now assigned the number EPA-HQ-2013-009249.

Processing of that particular request will continue unabated, without any tolling at this time, based on your representations below.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Chris Horner [mailto:CHorner@cei.org]
Sent: Wednesday, September 11, 2013 2:50 PM
To: Anderson, Cindy
Subject: RE: FOIA request EPA-HQ-2013-009249

Dear Ms. Anderson,

We are not aware of any progress in the litigation you refer to, as discussed, below. We are not waiving and have not waived any rights in relation to 009249 or any other request by verbally characterizing to EPA and DoJ counsel that -009249 was to protect us against EPA's current approach of not providing the responsive records we requested in 006937, but instead providing certain responsive information from those records.

For that latter reason there does not appear to be any pending or potential resolution, as in that call we suggested resolution was possible after reviewing exemplar responsive records; as you note this was two weeks ago, and we have received no such records, nor an assurance of receiving such records, but only demurrer. In fact, it is reasonable to conclude that EPA still will not produce responsive records (as identified in the "Invoice Nos" on the spreadsheet EPA provided excerpting certain responsive information from those records).

Regardless, this interpretation or response below is unilateral and in error, please do not cease processing that request, and we plan to continue operating on the relevant timetable in protecting our appellate rights as regards 009249 consistent with our request date.

If you have any questions please do not hesitate to contact me.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.262.4458 (M)

-----Original Message-----
From: Anderson, Cindy [mailto:anderson.cindy@epa.gov]
Sent: Wed 9/11/2013 2:37 PM
To: Chris Horner
Subject: FOIA request EPA-HQ-2013-009249

Mr. Horner -

I am writing in regard to the telephone conversation of August 29 between Mark Nebeker, Assistant U.S. Attorney, and you (to which I was also a party) about one of the pending FOIA lawsuits for which you serve as plaintiff's counsel.

After receiving information responsive to your earlier FOIA request for phone bills related to Gina McCarthy's use of text messages over a three-year period, you submitted an additional FOIA request, noted by number in the subject line above.

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I appreciate your acknowledging receipt of this message.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Miller, Kevin
To: Kelly, Lynn
Subject: RE: FW Determination
Date: Wednesday, May 22, 2013 4:01:02 PM

Why are these automatic emails being sent?

From: Kelly, Lynn
Sent: Tuesday, May 14, 2013 5:30 PM
To: Miller, Kevin
Subject: FW: FW Determination

FYI – Vivian called and left me a voicemail about this, but I haven't connected. It seems there is a new appeal but I can't track down from which request it is – I think it may be of an ATI request.

From: Vivian Warden [mailto:Warden.Vivian@epamail.epa.gov] **On Behalf Of** FOIA HQ
Sent: Tuesday, May 14, 2013 10:34 AM
To: Kelly, Lynn
Subject: Fw: FW Determination

This is being forwarded to you per Larry Gottesman.

Office of Environmental Information
U.S. Environmental Protection Agency
(202) 566-1667

----- Forwarded by Vivian Warden/DC/USEPA/US on 05/14/2013 10:33 AM -----

From: "Chris Horner" <CHorner@cei.org>
To: Monica Lewis/DC/USEPA/US@MSO365, FOIA HQ@EPA, <foia@erulemaking.net>
Date: 05/11/2013 11:39 AM
Subject: RE: FW Determination

To EPA FOIA Staff,

Please note the the following and inform us of the correction taken.

At 8:10 pm on May 9, 2013, lewis.monica@epa.gov sent an email (below) citing FOIA request EPA-HQ-2013-006005, stating that this request, regarding certain text messages sent to or from Gina McCarthy, was not billable. It attached a determination letter, referring to the McCarthy/text FOIA request and referencing -006005.

As is customary for EPA in this instance, it sent a corresponding email stating that this determination had been reached.

Specifically, at 8:11 pm on May 9, 2013, foia@erulemaking.net sent an email stating the following:

Subject: FOIA Fee Waiver Disposition Reached for EPA-HQ-2013-006005

Your request for Fee Waiver for the FOIA request EPA-HQ-2013-006005 has been determined to be not applicable

as the request is not billable. Additional details for this request are as follows:

Request Created on: 05/01/2013
Request Long Description: Requesting certain agency records regarding “Battelle”, “AAPCA”.

As you can see, the "AAPCA/Battelle" description of the FOIA request does not match that in the letter EPA sent contemporaneously. Further, the actual AAPCA/Battelle FOIA request (which has not been assigned a request number) was neither submitted from this email address nor on behalf of CEI. It was submitted on behalf of the American Tradition Institute, from a different email address than EPA is using to, possibly, correspond about that request (if citing the wrong FOIA request number; or, to correspond about the McCarthy/text request, if using the wrong description, requesting party and email address).

Please correct whatever this error is and inform me of the correction so I can keep our records straight regarding EPA's correspondence.

Thank you in advance.

Yours,

Christopher C. Horner Senior Fellow Competitive Enterprise Institute 1899 L St, NW 12th Floor Washington, DC, 20036 +1.202.331.2260 (O)

-----Original Message-----
From: lewis monica@epa.gov [mailto:lewis.monica@epa.gov]
Sent: Thu 5/9/2013 8:10 PM
To: Chris Horner
Subject: FW Determination

05/09/2013 08:10 PM
FOIA Request: EPA-HQ-2013-006005

From: Reynolds, Thomas
To: Minoli, Kevin; Rivas-Vazquez, Victoria; Smith, Roxanne; Johnson, Alisha
Cc: Miller, Kevin
Subject: Re: Greenwire: Conservative group sues to obtain McCarthy text messages
Date: Wednesday, May 29, 2013 4:56:01 PM

+ alisha

From: Minoli, Kevin
Sent: Wednesday, May 29, 2013 4:49:23 PM
To: Reynolds, Thomas; Rivas-Vazquez, Victoria; Smith, Roxanne
Cc: Miller, Kevin
Subject: FW: Greenwire: Conservative group sues to obtain McCarthy text messages

Hi Folks- Feel free to call me or Kevin Miller if you want any background on this new case. Thanks, Kevin

Kevin S. Minoli
Acting Principal Deputy General Counsel
Office of General Counsel
Main Office Line: 202-564-8064
Direct Dial: 202-564-5551

From: Miller, Kevin
Sent: Wednesday, May 29, 2013 4:21 PM
To: Minoli, Kevin
Subject: FW: Greenwire: Conservative group sues to obtain McCarthy text messages

---

From: Grady, Mary
Sent: Wednesday, May 29, 2013 4:17 PM
To: Albright, Scott; Anderson, Cindy; Hammitt, Jennifer; Kelly, Lynn; Margolis, Alan; Miller, Kevin; Nguyen, Quoc; Schulson, Daniel
Subject: Greenwire: Conservative group sues to obtain McCarthy text messages

EPA:

Conservative group sues to obtain McCarthy text messages

Emily Yehle, E&E reporter

Published: Wednesday, May 29, 2013

The Competitive Enterprise Institute filed a Freedom of Information Act lawsuit today demanding that U.S. EPA turn over air chief Gina McCarthy's text messages.

McCarthy, President Obama's pick to head EPA, sent text messages to staff on an agency-issued PDA, according to the lawsuit. CEI wants the messages from the days McCarthy testified in front of

congressional committees.

The lawsuit comes as McCarthy's nomination sits in the Senate, where Sen. Roy Blunt (R-Mo.) has placed it on hold to force EPA and other agencies to set a timeline for a draft environmental impact statement on a controversial project in his state (*E&ENews PM*, May 23).

In a complaint filed today with the U.S. District Court for the District of Columbia, CEI claims McCarthy regularly used text messaging for work correspondence. The group also claims that a "senior agency official" warned her against texting about lawmakers, especially on days where she testified in the House and Senate.

The group says it filed the lawsuit when EPA declined to hand over the texts for 18 specific dates through the FOIA process.

"EPA must produce these records under the Freedom of Information Act and, in the process, admit one of two scenarios: Either EPA has maintained text messages as required by law but has chosen repeatedly to withhold them ... or EPA has destroyed the texts, with possible criminal penalties," the conservative group said in a news release.

The isn't the first FOIA lawsuit CEI has filed in an attempt to get electronic correspondence. Last month, CEI joined the American Tradition Institute in seeking instant-message conversations for three top current and former EPA officials, including McCarthy. The groups withdrew the suit after an "atypically specific response" in which EPA asserted no such records existed (*E&ENews PM*, April 25).

CEI's involvement in that suit was spearheaded by senior fellow Christopher Horner, who last year uncovered EPA's practice of assigning alternative email accounts to agency administrators. That practice has also sparked concern from Capitol Hill and outside watchdog groups about whether such addresses violate the Federal Records Act.

[Note: the complaint has been sent to Kevin Miller.]

Mary Grady, Law Librarian
U.s. Environmental Protection Agency
Office of General Counsel
202/564-3972
grady.mary@epa.gov

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http://www.surveymonkey.com/s/epalibsurvey

From: [illegible]
To: [illegible]
Subject: [illegible]
Date: [illegible]

Just I will both Kevin. I m at 202-564-6373 when et he o you has a ew moments to chat

Thanks

From: Reynolds Thomas
Sent: Wednesday, May 29, 2013 4:56 M
To: Wood, Kevin; Fowler/Vasquez, Mike; Smith, Roxanne; Johnson, Alisha
Cc: Mike, Kevin
Subject: Re: G eenwo e Conse vative g oup sues to obtain McCa thy text messages

+ al sha

From: Wood, Kevin
Sent: Wednesday, May 29, 2013 4:49:22 M
To: Reynolds, Thomas; Fowler/Vasquez, Mike; Smith, Roxanne
Cc: Mike, Kevin
Subject: W G eenwo e Conse vative g oup sues to obtain McCa thy text messages

Hi all, - wo ld ke to ca l ime o Kevin M le 1 you want any backg ound on this new case Thanks Kevin

---

Kevin E. Wood
Acting P ncipa D puty Gene a Counse
O Fice Of Ge e a Counse
Mai Office Lo ae 202-564-8064
D ect Dia 202-564-6373

From: Mike, Kevin
Sent: Wednesday, May 29, 2013 4:21 M
To: Wood, Kevin
Subject: W G eenwo e Conse vative g oup sues to obtain McCa thy text messages

---

From: O ally, Mary
Sent: Wednesday, May 29, 2013 4:17 M
To: Ali, gail; Bu ll, Andie; ae C ady; Hamm B Jennife Kelly; yon, Ma gaile; Alex, Mike; Kevin; Nguyen, Quoc; Schulman, Daniel
Subject: G eenwo e Conse vative g oup sues to obtain McCa thy ad ne sages

EPA:

Conservative group sues to obtain McCarthy text messages

Kelly ste Staff eps ts

ub lished Wednesday, May 29, 20 3

he Compa t ive Ente p ise Inst tu e ed a sedeo o o ma ion Act aweuit ede y demanding hat U S E A a o ove at ohte G ina McCa hy s text messages

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[Note: the comp ddt has been sent to Kevin M le]

Mary O ally ae S n o ian
U s. Ent ronme a Ate ion Agency
O ice o Ge e a Counsel
202 564-5572
o ally.ma @epa.gov
Tell us how we're doing - rate our customer service!
h tp://www.ep a.gov/ocem/ep a survey/index.html

From: Hans Bader
To: Nebeker, Mark (USADC)
Cc: Anderson, Cindy; Chris Horner
Subject: RE: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]
Date: Wednesday, January 29, 2014 8:02:02 PM
Attachments: image001.png

We agree with this, with a change of one word. We would like to insert the word "FOIA" before the words "claims or actions" in this sentence,

> Plaintiff, thus, agrees to the dismissal of this action as set forth herein and further agrees not to bring any other claims or actions based in whole or in part on the FOIA requests at issue in this action

So that it reads:

> Plaintiff, thus, agrees to the dismissal of this action as set forth herein and further agrees not to bring any other FOIA claims or actions based in whole or in part on the FOIA requests at issue in this action

Of course, we agree to the dismissal of with prejudice of this action, contained earlier in the stipulation, which we agree bars us from bringing any lawsuit, or claim or action, alleging that EPA violated FOIA through its response to the two FOIA requests at issue in this case (such as HQ-2013-005618 and HQ-2013-006937). We recognize that's the whole point of dismissing the lawsuit **with** prejudice: to completely bar such claims or actions.

But we don't want to suggest that materials obtained through EPA's **responses to**, or **compliance with** these requests (as opposed to **violations of FOIA**) somehow can never be mentioned or be admissible (for example, as circumstantial evidence of something, like an agency activity) in some future legal proceeding. By adding "FOIA" before claims (since FOIA only makes violations actionable, not compliance with it), we hope to make this clear beyond doubt. (We think this is what is already intended by the existing language, but we want to be absolutely certain).

From: Hans Bader
Sent: Wednesday, January 29, 2014 7:03 PM
To: 'Nebeker, Mark (USADC)'
Cc: Anderson.cindy@epa.gov
Subject: RE: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]

I think this looks OK. I hope to get final confirmation from my colleagues soon.

From: Nebeker, Mark (USADC) [mailto:Mark.Nebeker@usdoj.gov]
Sent: Wednesday, January 29, 2014 6:39 PM

To: Hans Bader
Cc: Anderson.cindy@epa.gov
Subject: RE: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]

Hans:

This is just a draft and will need final OK from the agency and my Deputy Chief, but what do you think?

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, January 29, 2014 5:10 PM
To: Nebeker, Mark (USADC)
Subject: RE: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]

Sure, thanks.

From: Nebeker, Mark (USADC) [mailto:Mark.Nebeker@usdoj.gov]
Sent: Wednesday, January 29, 2014 5:09 PM
To: Hans Bader
Subject: RE: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]

OK. I just did a stipulation settling another FOIA case, do you want me to write it up?

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, January 29, 2014 4:30 PM
To: Nebeker, Mark (USADC)
Subject: RE: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]

Yes, thanks.

From: Nebeker, Mark (USADC) [mailto:Mark.Nebeker@usdoj.gov]
Sent: Wednesday, January 29, 2014 4:29 PM
To: Hans Bader
Subject: RE: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]

Still want me to confer on this? I just saw it.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Tuesday, January 28, 2014 2:51 PM
To: Nebeker, Mark (USADC)
Cc: Sam Kazman
Subject: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]

In light of the document productions that have occurred during the pendency of this lawsuit, plaintiff is willing to stipulate to dismissal of this lawsuit as part of a settlement of the case.

Since our lawsuit was a catalyst for these productions, we seek $2500 in attorneys fees from EPA as part of such a settlement (under which we would waive the right to subsequently petition for any

additional fees or costs, as well as agree to dismissal of the suit with prejudice).

Let me know if this is amenable to the government.

(The $2500 in fees sought are very modest in light of the time expended on the case, and themselves reflect a massive discount from the lodestar figure. Both Chris Horner and I individually have incurred enough hours that we each could seek far more than $2500 in fees. For example, I alone have spent at least ten hours on the case, which works out to more than $4000 under the hourly rate applicable to me under the Laffey Matrix for a lawyer with 11-19 years of experience. *See Gratz v. Bollinger*, 353 F.Supp.2d 929, 949 (E.D. Mich. 2005) (noting that I graduated from law school in 1994, and awarding me an hourly rate based on having practice law starting in that year). Chris Horner's billings, as a more senior lawyer, would be higher than mine, since his hourly rate under the Laffey Matrix is over $500 and he had incurred around 15 hours the last time I conferred with him.)

Thanks for reviewing this proposal.

Hans Bader
Co-Counsel for Plaintiff Competitive Enterprise Institute
202-331-2278

From:	Reynolds, Thomas
To:	Purchia, Liz; Johnson, Alisha; Garbow, Avi; Minoli, Kevin; McDermott, Marna
Subject:	RE: Wash Examiner: Watchdog group sues EPA for text messages from top officials
Date:	Friday, April 11, 2014 1:58:55 PM

+ OGC for awareness

From: Purchia, Liz
Sent: Friday, April 11, 2014 1:55 PM
To: Reynolds, Thomas; Johnson, Alisha
Subject: Wash Examiner: Watchdog group sues EPA for text messages from top officials

FYI this just posted in reaction to the Chris Horner FOIA

Watchdog group sues EPA for text messages from top officials

BY MICHAL CONGER | APRIL 11, 2014 AT 11:47 AM
http://washingtonexaminer.com/watchdog-group-sues-epa-for-text-messages-from-top-officials/article/2547105

A nonprofit watchdog group is suing the Environmental Protection Agency seeking text messages from top officials after the agency denied a Freedom of Information Act request for the records.

The Competitive Enterprise Institute filed the FOIA request in December for messages sent to and from current EPA AdministratorGina McCarthy from 11 officials on government-assigned devices.

The EPA refused to waive fees for the message transcripts, effectively denying the request,according to CEI.

FOIA law allows fees, which can easily run into the thousands of dollars for such requests, to be waived for nonprofit and media groups that use the information for the public benefit.

The EPA has already admitted to destroying text messages sent by McCarthy from her government phone, saying they were personal and therefore not subject to the request, according to CEI.

“CEI’s FOIA request will reveal whether each and every one of Ms. McCarthy's text messages to EPA colleagues were indeed 'personal', as the EPA has claimed to somehow excuse their wholesale destruction, or whether EPA has been destroying copies of officials’ use of this alternative to email. Under the law, there is no distinction between the two," said CEI fellow Chris Horner.

FOIA requests from CEI forced the EPA to release emails under former administrator Lisa Jackson's “Richard Windsor” alias, which she used to conduct government business.

CEI has also filed FOIA requests for emails, text messages and instant messages from Jackson, McCarthy and other EPA officials.

The rejection that sparked the lawsuit is not the first time EPA has refused fee waivers to stonewall CEI, according to the group.

A review by Horner and CEI last year suggested that the EPA was more likely to waive fees for environmental groups the agency considers "friendly" to its agenda and to deny waivers for conservative groups the agency considers hostile to its agenda.

Federal law doesn't permit agencies to deny FOIA requests because the requesters are critics of the agency.

Liz Purchia
Press Secretary
U.S. Environmental Protection Agency
Direct: 202-564-6691
Cell: 202-841-2230

From:	DAVIS, TANIKA
To:	Anderson, Cindy
Subject:	Read: CEI v. EPA (13-1074) Bills for Gina McCarthy"s Blackberry - text usage
Date:	Monday, September 16, 2013 4:24:53 PM
Importance:	High

Your message
To: DAVIS, TANIKA
Subject: CEI v. EPA (13-1074) Bills for Gina McCarthy's Blackberry - text usage
Sent: Monday, September 16, 2013 4:10:39 PM (UTC-05:00) Eastern Time (US & Canada)
was read on Monday, September 16, 2013 4:24:51 PM (UTC-05:00) Eastern Time (US & Canada).

From:	Fritz, Matthew
To:	Anderson, Cindy
Subject:	Read: CEI v. EPA (13-1074) CEI lawsuit re billing for text messages by Gina McCarthy since Jan. 2009
Date:	Monday, September 16, 2013 5:04:41 PM
Importance:	High

Your message
To: Fritz, Matthew
Subject: CEI v. EPA (13-1074) CEI lawsuit re billing for text messages by Gina McCarthy since Jan. 2009
Sent: Monday, September 16, 2013 5:00:19 PM (UTC-05:00) Eastern Time (US & Canada)
was read on Monday, September 16, 2013 5:04:09 PM (UTC-05:00) Eastern Time (US & Canada).

From:	Fritz, Matthew
To:	Anderson, Cindy
Subject:	Read: CEI v. EPA (13-1074) CEI lawsuit re billing for text messages by Gina McCarthy since Jan. 2009
Date:	Tuesday, September 17, 2013 3:26:58 PM
Importance:	High

Your message
To: Fritz, Matthew
Subject: FW: CEI v. EPA (13-1074) CEI lawsuit re billing for text messages by Gina McCarthy since Jan. 2009
Sent: Tuesday, September 17, 2013 3:11:52 PM (UTC-05:00) Eastern Time (US & Canada)
was read on Tuesday, September 17, 2013 3:26:14 PM (UTC-05:00) Eastern Time (US & Canada).

From:	Nebeker, Mark (USADC)
To:	Anderson, Cindy
Subject:	Read: CEI v. EPA (13-1074) G.McCarthy text message billing
Date:	Wednesday, November 20, 2013 6:21:34 PM
Importance:	High

Your message
To:
Subject: CEI v. EPA (13-1074) G.McCarthy text message billing
Sent: Wednesday, November 20, 2013 11:21:33 PM (UTC) Monrovia, Reykjavik
was read on Wednesday, November 20, 2013 11:21:29 PM (UTC) Monrovia, Reykjavik.

From:	Hilton, Patricia
To:	Anderson, Cindy
Subject:	Read: CEI v. EPA (13-1074) text bills for Gina McCarthy"s blackberry
Date:	Wednesday, September 18, 2013 2:48:07 PM

Your message
To: Hilton, Patricia
Subject: RE: CEI v. EPA (13-1074) text bills for Gina McCarthy's blackberry
Sent: Wednesday, September 18, 2013 2:47:03 PM (UTC-05:00) Eastern Time (US & Canada)
was read on Wednesday, September 18, 2013 2:47:17 PM (UTC-05:00) Eastern Time (US & Canada).

From:	Hilton, Patricia
To:	Anderson, Cindy
Subject:	Read: CEI v. EPA (13-1074) text bills for Gina McCarthy"s blackberry
Date:	Tuesday, September 17, 2013 4:03:40 PM

Your message
To: Hilton, Patricia
Subject: CEI v. EPA (13-1074) text bills for Gina McCarthy's blackberry
Sent: Tuesday, September 17, 2013 3:54:41 PM (UTC-05:00) Eastern Time (US & Canada)
was read on Tuesday, September 17, 2013 4:02:55 PM (UTC-05:00) Eastern Time (US & Canada).

From:	Reilly, Tom
To:	Anderson, Cindy
Subject:	Read: CEI v. EPA (13-1074) text bills for Gina McCarthy"s blackberry
Date:	Wednesday, September 18, 2013 2:48:09 PM

Your message
To: Reilly, Tom
Subject: RE: CEI v. EPA (13-1074) text bills for Gina McCarthy's blackberry
Sent: Wednesday, September 18, 2013 2:47:03 PM (UTC-05:00) Eastern Time (US & Canada)
was read on Wednesday, September 18, 2013 2:47:15 PM (UTC-05:00) Eastern Time (US & Canada).

From:	Anderson, Cindy
To:	Miller, Kevin
Subject:	release to CEI Fri, Dec. 6
Attachments:	CEI Release (12.6.13) cover ltr.docx 12.3.13 names REDACTED_Redacted -sample page 17.pdf
Importance:	High

Kevin –

I will swing by your office in the morning about 8:45 am, before the 9 am ILPG weekly meeting.

I'm attaching here again the draft cover letter to be sent on Friday to Chris Horner with spreadsheet of text messages from 7 months of invoices, along with the sample of redacted phone numbers.
cindy